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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXXIV

DECISIONS OF THE
U. S. INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

APRIL, 1915, TO JULY, 1915

REPORTED BY THE COMMISSION



WASHINGTON

1915

CONTENTS.

	Page.
Table of cases reported	v
Table of cases cited	xix
Members of the Commission	xxix
Opinions of the Commission	1
Cases disposed of without printed report	711
Reparation cases disposed of in unreported opinions	715
Table of memorandum and unreported cases	737
Supplemental reparation orders	753
Table of commodities	755
Table of localities	761
Index	773

E. I. C. C.

iii

TABLE OF CASES REPORTED.

	Page.
Aberdeen & Rockfish R. R. Co., Western Newspaper Union v.	326
Ahnapee & Western Ry. Co., Echols & Co. v.	644
Akron, Canton, & Youngstown Ry. Co., San Toy Coal Co. v.	93
Allowances to Short Lines of Railroad Serving Industries.	506
Alpha Portland Cement Co. v. B. & O. R. R. Co.	414
Ann Arbor R. R. Co.:	
Furniture Mfrs. Asso. of Grand Rapids v.	262
Jaeger v.	28
Operation of Certain Car-Ferry Boats Plying on Lake Michigan.	83
Aransas Pass Channel & Dock Co., Magnolia Petroleum Co. v.	330
Arizona Corporation Commission v. A., T. & S. F. Ry. Co.	158, 586
Arizona Eastern R. R. Co., Iowa Board of R. R. Com'rs v.	379
Associated Oil Co., Ownership of Certain Oil Steamers.	77
Atchison, Topeka & Santa Fe Ry. Co.:	
Arizona Corporation Commission v.	158, 586
Bascom-French Co. v.	388
Best Co. v.	154
Board of R. R. Com'rs of Iowa v.	111
California Pine Box & Lumber Co. v.	257
Goldfield Consolidated Milling & Transp. Co. v.	360
Goldfield Consolidated Mines Co. v.	360
Kanotex Refining Co. v.	271
Kansas City Live Stock Exchange v.	423
Louden Machinery Co. v.	383
Montana Tonopah Mines Co. v.	360
Rockford Mfrs. & Shippers' Asso. v.	262
Roswell Commercial Club v.	292
State Corporation Commission of New Mexico v.	292
Tonopah Belmont Development Co. v.	360
Tonopah Extension Mining Co. v.	360
Atlantic Coast Line R. R. Co.:	
Brantley Co. v.	21
Este Co. v.	469
Ballou & Wright v. N. Y., N. H. & H. R. R. Co.	120

Baltimore & Ohio R. R. Co.:	Page.
Alpha Portland Cement Co. v.	414
Merchants Exchange of St. Louis v.	341
Baltimore & Ohio Southwestern R. R. Co., Dewey Bros. Co. v.	135
Barber Asphalt Paving Co. v. C., R. I. & P. Ry. Co.	281
Bascom-French Co. v. A., T. & S. F. Ry. Co.	388
Bessemer & Lake Erie R. R. Co., Operation of Certain Car-Ferry Boats.	86
Best Co. v. A., T. & S. F. Ry. Co.	154
Blackburn-Warden Co. v. I. C. R. R. Co.	58
Blackstrap Molasses from Mobile, Ala., and New Orleans, La., Import Rates on.	253
Board of R. R. Com'rs of Iowa v.:	
A. E. R. R. Co.	379
A., T. & S. F. Ry. Co.	111
Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.	208
Board of Trade of Louisville v. I., C. & S. Traction Co.	640
Boston & Maine R. R., Moore & Thompson Paper Co. v.	323
Brantley Co. v. A. C. L. R. R. Co.	21
Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co.	630
Bryant-McLaughlin Asphalt Paving Co. v. C. G. W. R. R. Co.	281
Buffalo, Rochester & Pittsburgh Ry. Co., Operation of the Ontario Car Ferry Co. (Ltd.)	52
California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.	257
Canadian Pacific Ry. Co., Operation of the Pennsylvania-Ontario Transportation Co.	47
Cancellation of rates in Connection with Small Lines by Carriers in Official Classification Territory.	596
Car-Spotting Charges.	609
Cement, Lime, and Plaster to Arkansas.	124
Central of Georgia Ry. Co., Durham Coal & Iron Co. v.	10
Central Pacific Ry. Co.:	
Operation of a Boat Line on the Sacramento River and Connecting Waters.	174
Ownership of Stock in the Sacramento Transportation Co.	648
Chamber of Commerce of Indianapolis v. C., C., C. & St. L. Ry. Co.	267
Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.	581
Chamber of Commerce of Spartanburg, S. C. v. S. Ry. Co.	484
Chamberlain Medicine Co. v. I. C. Ry. Co.	281
Charlotte, N. C., City of v. S. Ry. Co.	128
Cheese from Wisconsin to Arkansas Points.	644
Chesapeake & Ohio Ry. Co., Kansas City Missouri River Navigation Co. v.	67

	Page.
Chicago & Alton R. R. Co., Southwestern Missouri Millers' Club v	341
Chicago & Eastern Illinois R. R. Co., Monon Coal Co. v	221
Chicago & Erie R. R. Co., Ownership and Operation of Certain Water Equipment on the Chicago River	218
Chicago & North Western Ry. Co., Langan Bros. Co. v	281
Chicago, Burlington & Quincy R. R. Co.:	
Bryant-McLaughlin Asphalt Paving Co. v	281
Des Moines Drug Co. v	281
Klingman v	281
Luthe Hardware Co. v	281
National Council of Farmers' Cooperative Assos. v	60
Port Huron Machinery Co. (Ltd.) v	281
Waterbury Chemical Co. v	281
Chicago Great Western R. R. Co.:	
Bryant-McLaughlin Asphalt Paving Co. v	281
Gilcrest Co. v	281
Humane Remedy Co. v	281
Chicago, Milwaukee & Gary Ry. Co., Luthe Hardware Co. v ..	281
Chicago, Milwaukee & St. Paul Ry. Co.:	
Board of Trade of Kansas City v	208
Chamber of Commerce of Milwaukee v	581
Des Moines Poultry & Butter Co. v	281
Harrah & Stewart Mfg. Co. v	281
Pulp & Paper Mfrs. Traffic Asso. v	500
Reeves Coal Co. v	122
Stock & Sons v	481
Streever Lumber Co. v	1
Wilson-Leuthold Lumber Co. v	146
Chicago, Rock Island & Pacific Ry. Co.:	
Barber Asphalt Paving Co. v	281
Davidson Bros. Co. v	281
Enns Milling Co. v	197
Harrah & Stewart Mfg. Co. v	281
Tonopah Extension Mining Co. v	360
Waterbury Chemical Co. v	281
Chicago Switching District, Rates to or from Certain Points in	234
City of Charlotte, N. C., v. S. Ry. Co	128
City of Danville, Va., v. S. Ry. Co	430
City of Rock Hill, S. C., v. S. Ry. Co	128
Classifications, Rules, Regulations, and Exceptions to, in Western Trunk Line Territory	554
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., Indianapolis Chamber of Commerce v	267

	Page.
Cleveland Salt Co. v. P. Co.....	638
Coal Rates from Illinois Mines to Omaha, Nebr., and other points.....	623
Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.....	231
Commercial Club of Rosewell v. A., T. & S. F. Ry. Co.....	292
Commodity Rates to Des Moines, Iowa.....	281
Commodity Rates to Pacific Coast Terminals and Intermediate Points.....	13
Concentration of Cotton at Alexandria, La.....	163
Corporation Commission of Arizona v. A., T. & S. F. Ry. Co..	158, 586
Corporation Commission of New Mexico v. A., T. & S. F. Ry. Co.....	292
Cotton, Concentration of, at Alexandria, La.....	163
Cotton Piece Goods from North Adams, Mass., to New York, N. Y.....	41
Cotton Rates, Eastbound Transcontinental.....	248
Cownie Glove Co. v. St. P. & K. C. S. L. R. R. Co.....	281
Crew-Levick Co. v. P. R. R. Co.....	179
Danville, Va., City of, v. S. Ry. Co.....	430
Davidson Bros. Co. v. C., R. I. & P. Ry. Co.....	281
Denver & Rio Grande R. R. Co., Montrose & Delta Counties Freight Rate Asso. v.....	393, 400, 409
Des Moines Committee, Greater (Inc.), v. M. & St. L. R. R. Co..	281
Des Moines Commodity Rates.....	281
Des Moines Drug Co. v. C., B. & Q. R. R. Co.....	281
Des Moines Iron Co. v. I. C. Ry. Co.....	281
Des Moines Poultry & Butter Co. v. C., M. & St. P. Ry. Co...	281
Dewey Bros. Co. v.:	
B. & O. S. W. R. R. Co.....	135
P., C., C. & St. L. Ry. Co.....	135
Duluth & Northern Minnesota Ry. Co. (See Pulp & Paper Mfrs. Asso. v. C., M. & St. P. Ry. Co.).....	500
Duluth, South Shore & Atlantic Ry. Co., Ownership and Operation of the Mackinac Transportation Co.....	229
Durham Coal & Iron Co. v. C. of G. Ry. Co.....	10
Eastbound Transcontinental Rates on Cotton.....	248
Echols & Co. v. A. & W. Ry. Co.....	644
El Paso & Southwestern Co., McArthur Bros. Co. v.....	30
Elevation Allowances on Grain at Kansas City, Mo., and Other Points.....	442
Elgin, Joliet & Eastern Ry. Co., Ohio Iron & Metal Co. v.....	75
Enns Milling Co. v. C., R. I. & P. Ry. Co.....	197
Erie & Western Transportation Co., Larkin Co. v.....	106

Erie R. R. Co.:	Page.
Operation of Lake Keuka Navigation Co.....	212
Ownership and Operation of Certain Water Equipment on the Chicago River.....	218
Este Co. v. A. C. L. R. R. Co	469
Farmers' Cooperative Assos., National Council of, v. C., B. & Q. R. R. Co	60
Fourth Section Applications:	
Nos. 205, 342, 343, 344, 349, 350, and 352.....	13
Nos. 348 and 649.....	111
No. 689.....	292
Nos. 1548, 1561, and 1573.....	128
Nos. 1561 and 2069.....	135
No. 1667.....	197
No. 1948.....	281
Nos. 2045 and 3786.....	281
Nos. 2045, 3786, 4151, 4218, 4219, 4220, and 4326.....	208
Nos. 9867 and 9992.....	278
Freight Rate Asso. of Montrose & Delta Counties v. D. & R. G. R. R. Co	393, 400, 409
Freight Rates to Points on Certain Railroads in Nevada, Inquiry and Investigation Concerning the Reasonableness of	360
Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co	262
Gilcrest Co. v. C. G. W. R. R. Co	281
Gile & Co. v. S. P. Co	319
Godchaux Co. (Ltd.) v. I. C. R. R. Co	253
Goldfield Cases	360
Goldfield Consolidated Milling & Transp. Co. v. A., T. & S. F. Ry. Co. (et al.)	360
Goldfield Consolidated Mines Co. v. S. P. Co. (et al.)	360
Goldfield Merger Mines Co. v. L. V. & T. R. R. Co	360
Grain & Hay Asso. of Memphis v. I. C. R. R. Co	315
Grain, Elevation Allowances at Kansas City, Mo., and Other Points	442
Grand Rapids & Indiana Ry. Co., Ownership and Operation of the Mackinac Transportation Co	229
Grand Rapids Furniture Mfrs. Asso. v. A. A. R. R. Co	262
Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co	202
Grand Trunk Milwaukee Car Ferry Co., Operation of by the Grand Trunk Western Ry. Co	54
Grand Trunk Ry. Co. of Canada:	
Meech & Stoddard (Inc.) v.....	39
Operation of the Ontario Car Ferry Co. (Ltd.).....	49

Grand Trunk Western Ry. Co.:	Page.
Klingman v.	281
Operation of the Grand Trunk Milwaukee Car Ferry Co.	54
Gravel and Sand Rates from Wisconsin to Chicago, Ill.	469
Gray & Smith v. P. Co.	25
Great Western Sugar Co. v. Y. & M. V. R. R. Co.	45
Greater Des Moines Committee (Inc.) v. M. & St. L. R. R. Co.	281
Hall, Luhrs & Co. v. S. P. Co.	360
Hardwood Lumber, Northbound Rates from the Southwest ..	708
Harrah & Stewart Mfg. Co. v. C., R. I. & P. Ry. Co.	281
Haskew Lumber Co. v. N., C. & St. L. Ry.	333
Hay to Chicago, Ill.	150
Hogs Between Salt Lake City, Utah, and California Points ..	627
Hooker-Hendrix Hardware Co. v. M., K. & T. Ry. Co.	3
Humane Remedy Co. v. G. C. W. R. R. Co.	281
Illinois Central R. R. Co.:	
Blackburn-Warden Co. v.	58
Godchaux Co. (Ltd.) v.	253
Louisiana Sugar Planters' Asso. v.	253
Memphis Grain & Hay Asso. v.	315
New Orleans Vegetable Growers, Merchants & Shippers' Asso. v.	32
Parlin & Orendorff Co. v.	90
Peet Bros. Mfg. Co. v.	634
Illinois Terminal R. R. Co., Waterbury Chemical Co. v.	281
Import Rates on Blackstrap Molasses from Mobile, Ala., and New Orleans, La.	253
Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry. Co.	267
Indianapolis, Columbus & Southern Traction Co., Louisville Board of Trade v.	640
Industrial Railways Case.	596
Inquiry and Investigation Concerning the Reasonableness of Freight Rates to Points on Certain Railroads in Nevada ..	360
In re Advances:	
Blackstrap Molasses, Import Rates from Mobile, Ala., and New Orleans, La.	253
Cancellation of Rates in Connection with Small Lines by Carriers in Official Classification Territory.	596
Car Spotting Charges.	609
Cheese Rates to Arkansas.	644
Coal Rates from Illinois Mines to Omaha, Nebr., and Other Points.	623
Concentration of Cotton at Alexandria, La.	163
Cotton Piece Goods from North Adams, Mass., to New York, N. Y.	41

In re Advances—Continued.

Cotton Rates, Eastbound Transcontinental.....	248
Grain Elevation Allowances at Kansas City, Mo., and Other Points.....	442
Hardwood Lumber from the Southwest.....	708
Hay Rates to Chicago, Ill.....	150
Hogs Between Salt Lake City, Utah, and California....	627
Import Rates on Blackstrap Molasses from Mobile, Ala., and New Orleans, La.....	253
Logs from Stuttgart, Ark., to Memphis, Tenn.....	216
Lumber Rates from Arkansas and Other States to Sioux City, Iowa.....	102
Lumber from Southern Points to Ohio River Crossings and Other Points.....	652
Mixed Carload Shipments of Lime, Cement, and Plaster from Interstate to Arkansas Points.....	124
Rates to or from Certain Points in the Chicago Switching District.....	234
Reicing of Perishable Commodities.....	140
Sand and Gravel Rates from Wisconsin Points to Chicago, Ill., and Other Points.....	467
Stone and Marble from Chicago and Peoria, Ill., to St. Paul, Minn.....	390
Transit Rates on Logs and Staves at Alexandria, La....	169
Transportation and Disposal of Waste Materials at Pitts- burgh, Pa., and Other Cities.....	337
Transportation of Potatoes in Refrigerator Equipment..	255
Trap or Ferry Car Service Charges.....	516
Waste Materials, Transportation and Disposal of at Pitts- burgh, Pa., and Other Cities.....	337
Westbound Transcontinental Refrigeration Charges....	140
Western Trunk Line Rules, Regulations, and Excep- tions to Classifications.....	554

In re:

Allowances to Short Lines of Railroad Serving Industries..	596
Applications, Under the Provisions of Section 5 of the Act to regulate Commerce as Amended by the Panama Canal Act, of:	
Ann Arbor R. R. Co., in Connection with the Opera- tion of Certain Car-Ferry Boats Plying on Lake Michigan.....	83
Buffalo, Rochester & Pittsburgh Ry. Co., Concerning its Interest in and Operation of the Ontario Car Ferry Co. (Ltd.).....	52

In re—Continued.

Applications, Under the Provisions of Section 5 of the Act to regulate Commerce as Amended by the Panama Canal Act, of—Continued.

	Page.
Canadian Pacific Ry. Co., Concerning its Interest in and Operation of the Pennsylvania-Ontario Transportation Co.	47
Chicago & Erie R. R. Co., Concerning its Ownership and Operation of Certain Water Equipment on the Chicago River	218
Duluth, South Shore & Atlantic Ry. Co., Grand Rapids & Indiana Ry. Co., and the Michigan Central R. R. Co., in Connection with Their Joint Ownership and Operation of the Mackinac Transportation Co.	229
Erie R. R. Co., Concerning its Ownership and Operation of Certain Water Equipment on the Chicago River	218
Erie R. R. Co., Seeking Authority for the Continuance of its Interest in and Operation of the Lake Keuka Navigation Co.	212
Grand Trunk Ry. Co. of Canada, in Connection with its Interest in and Operation of the Ontario Car Ferry Co. (Ltd.)	49
Grand Trunk Western Ry. Co., Concerning its Interest in and Operation of the Grand Trunk Milwaukee Car Ferry Co.	54
Oregon-Washington R. R. & N. Co., in Connection with the Ownership of the San Francisco & Portland S. S. Co.	165
Pennsylvania Co., Concerning its Interest in and Operation of the Pennsylvania-Ontario Transp. Co.	47
Pere Marquette R. R. Co. and Bessemer & Lake Erie R. R. Co., Concerning Their Interest in and Operation of Certain Car-Ferry Boats	86
Southern Pacific Co. and Associated Oil Co., in Connection with the Ownership of Certain Oil Steamers	77
Southern Pacific Co. and Central Pacific Ry. Co., in Connection with the Operation of a Boat Line on the Sacramento River and Connecting Waters	174
Southern Pacific Co. and Central Pacific Ry. Co., Relative to the Sacramento Transportation Co.	648

In re—Continued.

Page.

281

Commodity Rates to Des Moines	281
Commodity Rates to Pacific Coast Terminals and Intermediate Points	13

Fourth Section Applications:

Nos. 205, 342, 343, 344, 349, 350, and 352	13
Nos. 348 and 649	111
No. 689	292
Nos. 1548, 1561, and 1573	128
Nos. 1561 and 2069	135
No. 1667	197
No. 1948	281
Nos. 2045 and 3786	281
Nos. 2045, 3786, 4151, 4218, 4219, 4220, and 4326 ..	208
Nos. 9867 and 9992	278

Freight Rates from Various Points in the U. S. to Points on Railroads in Nevada	360
---	-----

Inquiry and Investigation Concerning the Reasonableness of Freight Rates to Points on Certain Railroads in Nevada	360
---	-----

Proportional Class Rates to Iowa Points	278
---	-----

Tap Line Case	116
---------------------	-----

Terminal Allowances and Rates at St. Louis, Mo., and East St. Louis, Ill.	453
--	-----

Iowa Board of R. R. Com'rs v.:

A. E. R. R. Co	379
A., T. & S. F. Ry. Co	111

Iowa Central Ry. Co.:

Chamberlain Medicine Co. v	281
Des Moines Iron Co. v	281
Mayer Bros. Construction Co. v	281

Jaeger v. A. A. R. R. Co	28
--------------------------------	----

Kanotex Refining Co. v. A., T. & S. F. Ry. Co	271
---	-----

Kansas City Board of Trade v. C., M. & St. P. Ry. Co	208
--	-----

Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co...	423
---	-----

Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.	67
--	----

Klingman v. C., B. & Q. R. R. Co	281
--	-----

Lake Keuka Navigation Co., Operation of, by the Erie R. R. Co.	212
--	-----

Lake Shore & Michigan Southern Ry. Co., Grand Rapids Plaster Co. v	202
--	-----

Langan Bros. Co. v. C. & N. W. Ry. Co	281
---	-----

Larkin Co. v. E. & W. Transp. Co	106
--	-----

Las Vegas & Tonopah R. R. Co., Goldfield Merger Mines Co. v	360
---	-----

	Page.
Lehigh Valley R. R. Co., Goldfield Consolidated Milling & Transportation Co. v.	360
Lime, Cement, and Plaster to Arkansas.....	124
Live Stock Exchange of Kansas City v. A., T. & S. F. Ry. Co. . .	423
Logs and Staves, Transit Rates at Alexandria, La.....	169
Logs from Stuttgart, Ark., to Memphis, Tenn.....	216
Louden Machinery Co. v. A., T. & S. F. Ry. Co.	383
Louisiana R. R. Commission v. St. L. S. W. Ry. Co.	472
Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co. .	511
Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.....	253
Louisville Board of Trade v. I., C. & S. Traction Co.....	640
Lumber from Arkansas and Other States to Sioux City, Iowa. .	102
Lumber Northbound Rates from the Southwest.....	708
Lumber from Southern Points to the Ohio River Crossings and Other Points.....	652
Luthe Hardware Co. v. C., M. & G. Ry. Co.	281
McArthur Bros. Co. v. E. P. & S. W. Co.....	30
Mackinac Transportation Co., Ownership and Operation of by the Duluth, South Shore & Atlantic Ry. Co., Grand Rapids & Indiana Ry. Co., and the Michigan Central R. R. Co.	229
Magnolia Petroleum Co. v. A. P. C. & D. Co.....	330
Manufacturers & Shippers' Asso. of Rockford v. A., T. & S. F. Ry. Co.....	262
Marble and Stone Rates from Chicago and Peoria, Ill., to St. Paul, Minn.....	390
Mayer Bros. Construction Co. v. I. C. Ry. Co.	281
Meech & Stoddard (Inc.) v. G. T. Ry. Co. of Canada.....	39
Memphis Grain and Hay Asso. v. I. C. R. R. Co.....	315
Merchants & Shippers' Asso., Vegetable Growers of New Orleans v. I. C. R. R. Co.....	32
Merchants Exchange of St. Louis v. B. & O. R. R. Co.....	341
Michigan Central R. R. Co., Ownership and Operation of the Mackinac Transportation Co.....	229
Miller & Co. v. N. P. Ry. Co.....	154
Milwaukee Chamber of Commerce v. C., M. & St. P. Ry. Co. .	581
Minneapolis & St. Louis R. R. Co., Greater Des Moines Committee (Inc.) v.....	281
Missouri, Kansas & Texas Ry. Co.:	
Coffeyville Mercantile Co. v.....	231
Hooker-Hendrix Hardware Co. v.....	3
Standard Roofing Co. v.....	3
Missouri Pacific Ry. Co., Goldfield Consolidated Mines Co. v..	360
Mixed Carload Shipments of Lime, Cement, and Plaster from Interstate to Arkansas Points.....	124

	Page.
Monon Coal Co. v. C. & E. I. R. R. Co.....	221
Montana Tonopah Mines Co. v. S. P. Co. (et al).....	360
Montrose & Delta Counties Freight Rate Assc. v. D. & R. G. R. R. Co.....	393, 400, 409
Moore & Thompson Paper Co. v. B. & M. R. R.....	323
Morgan's Louisiana & Texas R. R. & S. S. Co.:	
Brenner Lumber Co. v.....	630
Louisiana State Rice Milling Co. v.....	511
Nashville, Chattanooga & St. Louis Ry., Haskew Lumber Co. v	333
National Council of Farmers' Cooperative Assns. v. C., B. & Q. R. R. Co.....	60
Nebraska State Railway Commission v. U. P. R. R. Co.....	381
New Mexico Corporation Commission v. A., T. & S. F. Ry. Co.	292
New Orleans Vegetable Growers, Merchants & Shippers' Asso. v. I. C. R. R. Co.....	32
New York, New Haven & Hartford R. R. Co., Ballou & Wright v.....	120
Northbound Rates on Hardwood from the Southwest.....	708
Northern Pacific Ry. Co., Miller & Co. v.....	154
Ohio Iron & Metal Co. v. E., J. & E. Ry. Co.....	75
Ontario Car Ferry Co. (Ltd.):	
Operation of by the Buffalo, Rochester & Pittsburgh Ry. Co.....	52
Operation of by the Grand Trunk Ry. Co. of Canada.....	49
Oregon-Washington R. R. & N. Co., Ownership of the San Francisco & Portland S. S. Co.....	165
Pacific Creamery Co. v. S. P. Co.....	586
Panama Canal Act, Applications Under.....	47,
	49, 52, 54, 77, 83, 86, 165, 174, 212, 218, 229, 648
Parlin & Orendorff Co. v. I. C. R. R. Co.....	90
Peet Bros. Mfg. Co. v. I. C. R. R. Co.....	634
Pennsylvania-Ontario Transportation Co., Operation of by the Pennsylvania Co., and Canadian Pacific Ry. Co.....	47
Pennsylvania Co.:	
Cleveland Salt Co. v.....	638
Goldfield Consolidated Mines Co. v.....	360
Gray & Smith v.....	25
Operation of the Pennsylvania-Ontario Transportation Co.....	47
Pennsylvania Paraffine Works v. P. R. R. Co.....	179
Pennsylvania R. R. Co.:	
Alpha Portland Cement Co. v.....	414
Crew-Levick Co. v.....	179
Pennsylvania Paraffine Works v.....	179

Pere Marquette R. R. Co.:	Page.
Operation of Certain Car-Ferry Boats.....	86
Reeves Coal Co. v.....	621
Perishable Commodities, Re-icing of.....	140
Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co., Dewey Bros. Co. v.....	116
Plaster, Lime and Cement to Arkansas.....	124
Port Huron Machinery Co. (Ltd.) v. C., B. & Q. R. R. Co....	281
Potatoes, Transportation of, in Refrigerator Equipment.....	255
Proportional Class Rates to Iowa Points.....	278
Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co...	500
Railroad Commission of Louisiana v. St. L. S. W. Ry. Co....	472
Railroad Com'rs of Iowa v.:	
A. E. R. R. Co.....	379
A., T. & S. F. Ry. Co.....	111
Railway Commission of Nebraska v. U. P. R. R. Co.....	381
Rates to or from Certain Points in the Chicago Switching District.....	234
Reeves Coal Co. v.:	
C., M. & St. P. Ry. Co.....	122
P. M. R. R. Co.....	621
Refrigeration Charges, Westbound.....	140
Rock Hill, S. C., City of, v. S. Ry. Co.....	128
Rockford Mfrs. & Shippers' Asso. v. A., T. & S. F. Ry. Co...	262
Roswell Commercial Club v. A., T. & S. F. Ry. Co.....	292
Rules Governing the Transportation of Potatoes in Refrigerator Equipment.....	255
Rules, Regulations, and Exceptions to Classifications in Western Trunk Line Territory.....	554
Sacramento Transportation Co., Southern Pacific Co., and Central Pacific Ry. Co., Ownership of Stock in.....	648
St. Louis Merchants Exchange v. B. & O. R. R. Co.....	341
St. Louis Southwestern Ry. Co., Railroad Commission of Louisiana v.....	472
St. Louis Terminal Case.....	453
St. Paul & Kansas City Short Line R. R. Co., Cownie Glove Co. v.....	281
San Francisco & Portland S. S. Co., Ownership of, by the Oregon-Washington R. R. & N. Co.....	165
San Pedro, Los Angeles & Salt Lake R. R. Co., Goldfield Consolidated Mines Co. v.....	360
San Toy Coal Co. v. A., C. & Y. Ry. Co.....	93
Sand and Gravel from Wisconsin Points to Chicago, Ill., and Other Points.....	467

TABLE OF CASES REPORTED.

XVII

	Page.
Seaboard Air Line Ry., Shands v.....	214
Second Industrial Railways Case.....	596
Shands v. S. A. L. Ry.....	214
Short Lines of Railroad Serving Industries, Allowances to....	596
Small Lines, Cancellation of Rates in Connection with, by Carriers in Official Classification Territory.....	596
Southern Pacific Co.:	
Gile & Co. v.....	319
Goldfield Consolidated Milling & Transportation Co. v....	360
Goldfield Consolidated Mines Co. v.....	360
Hall, Luhrs & Co. v.....	360
Montana Tonopah Mines Co. v.....	360
Operation of a Boat Line on the Sacramento River and Connecting Waters.....	174
Ownership of Certain Oil Steamers.....	77
Ownership of Stock in Sacramento Transportation Co....	648
Pacific Creamery Co. v.....	586
Southern Ry. Co.:	
Charlotte, N. C., City of, v.....	128
City of Danville, Va., v.....	430
Rock Hill, S. C., City of, v.....	128
Spartanburg Chamber of Commerce v.....	484
Spiegle & Co. v.....	448
Southwestern Missouri Millers' Club v. C. & A. R. R. Co.....	341
Spartanburg Chamber of Commerce v. S. Ry. Co.....	484
Spiegle & Co. v. S. Ry. Co.....	448
Standard Roofing Co. v. M., K. & T. Ry. Co.....	3
State Corporation Commission of New Mexico v. A., T. & S. F. Ry. Co.....	292
Staves and Logs, Transit Rates on, at Alexandria, La.....	169
Stock & Sons v. C., M. & St. P. Ry. Co.....	481
Stone and Marble Rates from Chicago and Peoria, Ill., to St. Paul, Minn.....	390
Streever Lumber Co. v. C., M. & St. P. Ry. Co.....	1
Sugar Planters' Asso. of Louisiana v. I. C. R. R. Co.....	253
Tap Line Case.....	116
Terminal Allowances and Rates at St. Louis, Mo., and East St. Louis, Ill.....	453
Tonopah Belmont Development Co. v. A., T. & S. F. Ry. Co....	360
Tonopah Extension Mining Co. v. A., T. & S. F. Ry. Co. (et al.).....	360
Transit Rates on Logs and Staves at Alexandria, La.....	169
Trap or Ferry Car Service Charges.....	516

	Page.
Union Pacific R. R. Co., Nebraska State Railway Commis- sion v.....	381
Vegetable Growers, Merchants & Shippers' Asso. of New Orleans v. I. C. R. R. Co.....	32
Waste Materials, Transportation and Disposal of, at Pitts- burgh, Pa., and Other Cities.....	337
Waterbury Chemical Co. v. C., R. I. & P. Ry. Co.....	281
Westbound Transcontinental Refrigeration Charges.....	140
Western Newspaper Union v. A. & R. R. R. Co.....	326
Western Trunk Line Rules.....	554
Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.....	146
Yazoo & Mississippi Valley R. R. Co., Great Western Sugar Co. v.....	45
	84 I. C. C.

TABLE OF CASES CITED.

	Page.
Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. (17 I. C. C., 30)	203
Adams Express Co. v. Croninger (226 U. S., 491)	109
Alan Wood Iron & Steel Co. v. P. R. R. Co. (22 I. C. C., 540) ..	605
Albree v. B. & M. R. R. (22 I. C. C., 303)	192
American National Live Stock Asso. v. S. P. Co. (32 I. C. C., 515)	628
Application S. P. Co. In re Operation S. S. Co. (32 I. C. C., 692) ..	80
Arizona Corp. Comm. v. A., T. & S. F. Ry. Co. (28 I. C. C., 428) ..	589
Arizona Lumber & Timber Co. v. A., T. & S. F. Ry. Co. (U. R. A-920)	259
Arlington Heights Fruit Exchange v. S. P. Co. (20 I. C. C., 106)	144, 189, 407
Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co. (18 I. C. C., 310)	547, 616
Atchison, T. & S. F. Ry. Co. v. Kansas City Stock Yards Co. (33 I. C. C., 92)	600
Atchison, T. & S. F. Ry. Co. v. U. S. (232 U. S., 199)	142, 190, 407, 446, 617
Atlanta Freight Bureau v. N., C. & St. L. Ry. (29 I. C. C., 476) ..	490
Baer Bros. v. D. & R. G. R. R. Co. (233 U. S., 479)	211
Balfour, Guthrie & Co. v. O.-W. R. R. & N. Co. (21 I. C. C., 539) ..	65
Ballou & Wright v. N. Y., N. H. & H. R. R. Co. (U. R. A-494) ..	121
Baltimore & O. R. R. Co. v. Pitcairn Coal Co. (215 U. S., 481) ..	191
Baltimore & O. R. R. Co. v. U. S. (200 Fed., 779)	454
Baltimore Chamber of Commerce v. B. & O. R. R. Co. (22 I. C. C., 596)	228, 351
Bascom-French Co. v. A., T. & S. F. Ry. Co. (34 I. C. C., 388) ..	313
Bascom-Porter Co. v. A., T. & S. F. Ry. Co. (24 I. C. C., 297) ..	389
Bellgrade Lumber Co. v. I. C. R. R. Co. (32 I. C. C., 403)	686
Bituminous Coal Operators v. P. R. R. Co. (23 I. C. C., 385) ..	97
Black Mountain Coal Land Co. v. S. Ry. Co. (15 I. C. C., 286) ..	98
Blackman v. S. Ry. Co. (10 I. C. C., 352)	639
Blakely Southern R. R. Co. v. A. C. L. R. R. Co. (26 I. C. C., 344)	606
Bluefield Shippers' Asso. v. N. & W. Ry. Co. (22 I. C. C., 519) ..	137
Board of Trade of Chicago v. A., T. & S. F. Ry. Co. (29 I. C. C., 438)	152

	Page.
Board of Trade of Winston-Salem v. N. & W. Ry. Co. (16 I. C. C., 12)	441
Board of Trade of Winston-Salem v. N. & W. Ry. Co. (26 I. C. C., 146)	441
Boileau v. P. & L. E. R. R. Co. (22 I. C. C., 640)	100, 418
Boyle v. P. & R. Ry. Co. (54 Pa., 310)	187
Boyle Commission Co. v. W. P. Ry. Co. (U. R. A-327)	413
Breese-Trenton Mining Co. v. W. R. R. Co. (19 I. C. C., 598) ..	626
Bristol Door & Lumber Co. v. N. & W. Ry. Co. (25 I. C. C., 87) ..	451
Bulte Milling Co. v. C. & A. R. R. Co. (15 I. C. C., 351)	482
Burgess v. Transcontinental Freight Bureau (13 I. C. C., 668) ..	121
Campbell's Creek Coal Co. v. A. A. R. R. Co. (33 I. C. C., 558) ..	194
Carroll, Brough & Robinson v. A., T. & S. F. Ry. Co. (31 I. C. C., 466)	173
Cau v. T. & P. Ry. Co. (194 U. S., 427)	109
Central Commercial Co. v. L. & N. R. R. Co. (27 I. C. C., 114) ..	46
Central Yellow Pine Asso. v. I. C. R. R. Co. (10 I. C. C., 505) ..	677
Chattanooga Packet Co. v. I. C. R. R. Co. (33 I. C. C., 384) ..	74
Chicago & A. R. R. Co. v. Kirby (225 U. S., 155)	246
Chicago Lumber & Coal Co. v. T. S. Ry. Co. (16 I. C. C., 323) ..	656
Chicago, M. & St. P. Ry. Co. v. Iowa (233 U. S., 334)	275, 353
Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co. (226 U. S., 426)	190
City Council of Atchison, Kans., v. M. P. Ry. Co. (12 I. C. C., 111)	443
City Council of Atchison, Kans., v. M. P. Ry. Co. (12 I. C. C., 254)	443
City of Danville v. S. Ry. Co. (8 I. C. C., 409)	430
Coffeyville Mercantile Co. v. M., K. & T. Ry. Co. (33 I. C. C., 122)	231
Coleman v. N. Y., N. H. & H. R. R. Co. (215 Mass., 45)	109
Commercial Club of Omaha v. A. & S. R. Ry. Co. (18 I. C. C., 532)	103
Commercial Club of Omaha v. A. & S. R. Ry. Co. (27 I. C. C., 302)	389
Commercial Club, Salt Lake City v. A., T. & S. F. Ry. Co. (19 I. C. C., 218)	18, 394
Corporation Commission, North Carolina v. N. & W. Ry. Co. (19 I. C. C., 303)	129
Corporation Commission, North Carolina v. S. Ry. Co. (33 I. C. C., 487)	439
Corporation Commission, Oklahoma v. A. & S. Ry. Co. (26 I. C. C., 520)	476
Crane Iron Works v. C. R. R. Co. of N. J. (17 I. C. C., 514) ..	601

	Page.
Crane Iron Works v. U. S. (209 Fed. 238)	601
Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co. (28 I. C. C., 274)	36
Davis Bros. Lumber Co. v. C., R. I. & P. Ry. Co. (26 I. C. C., 257)	672
Decatur Navigation Co. v. L. & N. R. R. Co. (31 I. C. C., 281) ..	73
Decker & Sons v. C., M. & St. P. Ry. Co. (30 I. C. C., 547) ...	637
Deming Lumber Co. v. S. P. Co. (24 I. C. C., 598)	389
Dixie Mfg. Co. v. B., C. & A. Ry. Co. (31 I. C. C., 337)	328
Douglas & Co. v. I. C. R. R. Co. (31 I. C. C., 587)	564
Eddleman v. M. V. R. R. Co. (13 I. C. C., 103)	31
Elk Cement & Lime Co. v. B. & O. R. R. Co. (22 I. C. C., 84) ..	206
Federal Milling Co. v. M., St. P. & S. Ste. M. Ry. Co. (27 I. C. C., 696)	483
Federal Sugar Refining Co. v. B. & O. R. R. Co. (17 I. C. C., 40) ..	454
Federal Sugar Refining Co. v. B. & O. R. R. Co. (20 I. C. C., 200) ..	454
Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co. (18 I. C. C., 391)	661
Five Per Cent case (31 I. C. C., 351)	136, 247, 419, 545
Five Per Cent case (32 I. C. C., 325)	419, 432, 487, 657, 704
Forest City Frieght Bureau v. A. A. R. R. Co. (18 I. C. C., 205) ..	329
General Electric Co. v. N. Y. C. & H. R. R. R. Co. (14 I. C. C., 237)	601, 617
Gentry v. A., T. & S. F. Ry. Co. (13 I. C. C., 171)	667
Gile & Co. v. S. P. Co. (22 I. C. C., 298)	319
Gillis & Son v. P., B. & W. R. R. Co. (26 I. C. C., 61)	494
Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co. (23 I. C. C., 115)	396
Gulf, C. & S. F. Ry. Co. v. Texas (204 U. S., 403)	274, 352
Hillsdale Coal & Coke Co. v. P. R. R. Co. (19 I. C. C., 356) ...	187
Houston, E. & W. T. Ry. Co. v. U. S. (234 U. S., 342)	357, 473
Hoyt & Bergen v. C. & N. W. Ry. Co. (32 I. C. C., 319)	557
Huerfano Coal Co. v. C. & S. E. R. R. Co. (28 I. C. C., 502) ..	194
Iglehart v. P. Co. (U. R. A-228)	470
Illinois Coal cases (32 I. C. C., 659)	224, 624
Imperial Wheel Co. v. St. L., I. M. & S. Ry. Co. (20 I. C. C., 56) ..	512
Import Rate case (162 U. S., 197)	253
Industrial Railways case (29 I. C. C., 212)	598, 614
Industrial Railways case (32 I. C. C., 129)	603
In re:	
Advances on Coal by the C. & O. (22 I. C. C., 604) ...	228, 418
Advances on Coal within Chicago Switching District (27 I. C. C., 71)	150
Advances on Logs and Bolts (24 I. C. C., 683)	450

In re—Continued.

	Page.
Advances on Lumber (24 I. C. C., 686)	679
Advances on Sand and Gravel (24 I. C. C., 249)	467
Advances in Rates on Grain (21 I. C. C., 22)	584
Alleged Unreasonable Rates on Meats (22 I. C. C., 160) ..	628
Allowances to Elevators (10 I. C. C., 309)	443
Allowances to Elevators by U. P. R. R. Co. (12 I. C. C., 85)	443
Allowances to Elevators by U. P. R. R. Co. (14 I. C. C., 315)	443
Bills of Lading (29 I. C. C., 417)	109
Cancellation of Joint Rates with C., Z. & G. R. R. Co. (27 I. C. C., 353)	601
Cancellation of Rates in Connection with Small Lines (34 I. C. C., 596)	240
Car Ferry Allowances at Cheboygan, Mich. (32 I. C. C., 578)	601
Chicago-Duluth Grain Rates (27 I. C. C., 216)	382, 584
Class and Commodity Rates to Salt Lake City (32 I. C. C., 551)	397, 404
Class Rates between Stations in Louisiana (33 I. C. C., 302) ..	358
Coal Rates on the Stony Fork Branch (26 I. C. C., 168) ..	194
Commodity Rates to Pacific Coast Terminals (32 I. C. C., 611)	14, 294, 302
Commodity Rates to Pacific Coast Terminals (34 I. C. C., 13)	294
Elevator Allowances (24 I. C. C., 197)	443
Elevator Allowances at St. Louis (30 I. C. C., 696)	445
Express Rates, Practices, Accounts, and Revenues (24 I. C. C., 380)	475
Express Rates, Practices, Accounts, and Revenues (28 I. C. C., 131)	475
Fourth Section Violations in Rates on Sugar (31 I. C. C., 511)	159, 412
Fourth Section Violations in the Southeast (30 I. C. C., 153)	300, 485
Gravel and Sand Switching Charges at Chicago (32 I. C. C., 291)	153
Interstate Class and Commodity Rates in Louisiana (33 I. C. C., 626)	358
Lumber Rates from Helena, Ark., and Other Points (33 I. C. C., 297)	103
Lumber Rates from Memphis to New Orleans (27 I. C. C., 471)	675
	34 I. C. C.

In re—Continued.

Page.

Lumber Rates—Southern Ry. Points to Eastern Points (31 I. C. C., 244)	692
Lumber Rates Through Ohio River Crossings (29 I. C. C., 38)	194
Muncie & Western R. R. Co. (30 I. C. C., 434)	619
New Orleans Storage Rules and Regulations (28 I. C. C., 605)	639
Northbound Rates on Hardwood (34 I. C. C., 708)	664
Northbound Rates on Hardwood from Southwest (32 I. C. C., 521)	399, 664, 693, 708
Precooling and Preicing (23 I. C. C., 267)	141
Protection of Potato Shipments in Winter (26 I. C. C., 681)	157
Protection of Potato Shipments in Winter (29 I. C. C., 504)	156
Rates on Cantaloupes and Potatoes from Ruston, La. (26 I. C. C., 101)	35
Rates on Cement, Lime, and Salt (32 I. C. C., 532) ..	560
Rates on Iron and Steel Articles (30 I. C. C., 337)	289
Rates on Lumber from Southern Points (34 I. C. C., 652) ..	709
Rates to North Carolina Points (29 I. C. C., 550)	439, 485
Rates on Poultry in Western Trunk Line Territory (32 I. C. C., 380)	557
Refrigeration Charges on Fruits and Vegetables (29 I. C. C., 653)	145, 408
Rental Charges for Insulated Cars (31 I. C. C., 255) ...	157, 255
Transcontinental Commodity Rates, Westbound (26 I. C. C., 456)	263
Transit Regulations on Grain and Dried Beans (32 I. C. C., 38)	152
Transportation, etc., of Fruits (10 I. C. C., 360)	185
Transportation of Potatoes in Heater Cars (25 I. C. C., 159) ..	156
Trap or Ferry Car Service Charges (34 I. C. C., 516)	557
Weighing of Freight by Carrier (28 I. C. C., 7)	426
Western Classification No. 51 (25 I. C. C., 442)	125, 385, 478, 515, 576

Interior Iowa Cities case (29 I. C. C., 536)

Interstate Commerce Commission v.:

Diffenbaugh (222 U. S., 42)	242, 443
Peavy & Co. (222 U. S., 42)	462
S. Ry. Co. (117 Fed., 741)	431
S. Ry. Co. (122 Fed., 800)	431
U. P. R. R. Co. (222 U. S., 541)	399

	Page.
Iowa Soap Co. v. C., B. & Q. R. R. Co. (16 I. C. C., 444)	561
Iowa State Board of R. R. Commissioners v. A. E. R. R. Co. (28 I. C. C., 193)	283
Jennison Co. v. G. N. Ry. Co. (18 I. C. C., 113)	483
Jones v. St. L. & S. F. R. R. Co. (12 I. C. C., 144)	460
Kansas City Southern Ry. Co. v. Carl (227 U. S., 639)	109
Keogh v. M., St. P. & S. Ste. M. Ry. Co. (26 I. C. C., 73)	172
Lake Line Applications Under Panama Canal Act (33 I. C. C., 699)	56, 166
Lamb-Davis Lumber Co. v. G. N. Ry. Co. (31 I. C. C., 341) ..	412
Larkin Co. v. E. & W. T. Co. (24 I. C. C., 645)	106
Livingston Bros. v. C., M. & St. P. Ry. Co. (U. R. A-729) ...	573
Los Angeles Switching case (234 U. S., 294)	602, 616
Louisiana Sugar Planters' Asso. v. I. C. R. R. Co. (31 I. C. C., 311)	253
Louisville Board of Trade v. I., C. & S. T. Co. (27 I. C. C., 499) .	640
Lum v. G. N. Ry. Co. (33 I. C. C., 541)	509
Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co. (24 I. C. C., 220)	656
Maier & Co. v. S. P. Co. (29 I. C. C., 103)	159
Manufacturers & Merchants' Asso. of New Albany v. A. & A. R. R. Co. (24 I. C. C., 331)	679
Manufacturers Ry. Co. v. St. L., I. M. & S. Ry. Co. (28 I. C. C., 93)	152, 241, 601
Maricopa County Commercial Club v. P. & E. R. R. Co. (22 I. C. C., 221)	589
Memphis Grain & Hay Asso. v. I. C. R. R. Co. (24 I. C. C., 609) .	315
Merchants Exchange of St. Louis v. B. & O. R. R. Co. (30 I. C. C., 700)	342, 351
Messilla Valley Produce Exchange v. A., T. & S. F. Ry. Co. (U. R. A-229)	311
Metropolis Commercial Club v. I. C. R. R. Co. (30 I. C. C., 40)	670, 679
Michigan Hardwood Mfrs. Asso. v. Transcontinental Freight Bureau (27 I. C. C., 32)	121
Miller & Co. v. P. M. R. R. Co. (U. R. A-309)	470
Minnesota Rate case (230 U. S., 352)	356
Missouri Rate cases (230 U. S., 474)	356
Mitchell Coal & Coke Co. v. P. R. R. Co. (230 U. S., 247)	191
Mobile Chamber of Commerce v. M. & O. R. R. Co. (23 I. C. C., 417)	189
Moise Bros. Co. v. C., R. I. & P. Ry. Co. (16 I. C. C., 550) ...	300
Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. (34 I. C. C., 393)	401, 409

TABLE OF CASES CITED.

XXV

	Page.
Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. (34 I. C. C., 400)	393, 409
Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. (34 I. C. C., 409)	393, 401
Moore v. D. & R. G. R. R. Co. (25 I. C. C., 1)	399
Morrisdale Coal Co. v. P. R. R. Co. (230 U. S., 304)	191
National Casket Co. v. S. Ry. Co. (31 I. C. C., 678)	449
National Hay Asso. v. M. C. R. R. Co. (19 I. C. C., 34)	384
National Lumber Dealers' Asso. v. A. C. L. R. R. Co. (14 I. C. C., 154)	215
New Pittsburgh Coal Co. v. H. V. Ry. Co. (24 I. C. C., 244) ..	100
Newman Lumber Co. v. M. C. R. R. Co. (26 I. C. C., 97)	26
Newport Mining Co. v. C. & N. W. Ry. Co. (33 I. C. C., 645) ..	152
Nobles Bros. Grocery Co. v. F. W. & D. C. Ry. Co. (12 I. C. C., 242)	303
Norman Lumber Co. v. L. & N. R. R. Co. (22 I. C. C., 239) ..	678
Norman Lumber Co. v. L. & N. R. R. Co. (29 I. C. C., 565) ..	678, 703
Northern Pacific Ry. Co. v. North Dakota (236 U. S., 585) ...	354
Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co. (33 I. C. C., 360)	658
Ohio Railroad Commission v. Worthington (225 U. S., 101) ..	274
Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. R. Co. (14 I. C. C., 1)	112
Pacific Coast Lumber Mfrs. Asso. v. N. P. Ry. Co. (14 I. C. C., 23)	114, 667
Pacific Creamery Co. v. S. P. Co. (29 I. C. C., 405)	586
Paducah Board of Trade v. I. C. R. R. Co. (29 I. C. C., 583) ...	670
Paducah Board of Trade v. I. C. R. R. Co. (29 I. C. C., 593) ...	679
Pecos Mercantile Co. v. A., T. & S. F. Ry. Co. (13 I. C. C., 173) ..	299
Pennsylvania R. R. Co. v. International Coal Mining Co. (230 U. S., 184)	191
People's Fuel & Supply Co. v. G. T. W. Ry. Co. (27 I. C. C., 24) ..	152
Pipe Line cases (234 U. S., 548)	81
Pittsburgh & Southwestern Coal Co. v. W.-P. T. Ry. Co. (31 I. C. C., 660)	194
Pittsburgh Vein Operators of Ohio v. P. Co. (24 I. C. C., 280) ..	100
Ponchatoula Farmers' Asso. v. I. C. R. R. Co. (19 I. C. C., 513)	35, 514
Poor Grain Co. v. C., B. & Q. Ry. Co. (12 I. C. C., 418)	123
Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co. (27 I. C. C., 83)	500
Rail & River Coal Co. v. B. & O. R. R. Co. (14 I. C. C., 86) ...	189
Railroad Commission of California v. A. G. S. R. R. Co. (32 I. C. C., 17)	142, 407
84 I. C. C.	

	Page.
Railroad Commission of Louisiana <i>v.</i> St. L. S. W. Ry. Co. (23 I. C. C., 31)	172, 358, 473
Railroad Commission of Oregon <i>v.</i> S. P. Co. (24 I. C. C., 273) ..	320
Railroad Commission of Texas <i>v.</i> A., T. & S. F. Ry. Co. (20 I. C. C., 463)	304, 406
Railroad Commissioners of Florida <i>v.</i> S. A. L. Ry. Co. (16 I. C. C., 1)	24
Rice <i>v.</i> C., W. & B. Ry. Co. (3 I. C. C., 186)	185
Rice <i>v.</i> G. R. R. Co. (14 I. C. C., 75)	429
Robinson <i>v.</i> B. & O. R. R. Co. (222 U. S., 506)	191
Roswell Commercial Club <i>v.</i> A., T. & S. F. Ry. Co. (12 I. C. C., 339)	303
Saginaw & Manistee Lumber Co. <i>v.</i> A., T. & S. F. Ry. Co. (19 I. C. C., 119)	258
St. Louis, I. M. & S. Ry. Co. <i>v.</i> U. S. (217 Fed., 80)	670
Sawyer & Austin Lumber Co. <i>v.</i> St. L., I. M. & S. Ry. Co. (21 I. C. C., 464)	662
Scofield <i>v.</i> L. S. & M. S. Ry. Co. (2 I. C. C., 90)	185
Shaffer & Co. <i>v.</i> C., R. I. & P. Ry. Co. (21 I. C. C., 8)	109
Shreveport case (234 U. S., 342)	172
Sioux City Commercial Club <i>v.</i> A. & S. R. R. R. Co. (24 I. C. C., 177)	103
Solvay Process Co. <i>v.</i> D. L. & W. R. R. Co. (14 I. C. C., 246) ..	601
Southern Hardwood Traffic Bureau <i>v.</i> I. C. R. R. Co. (31 I. C. C., 6)	686
Southern Illinois Millers' Asso. <i>v.</i> L. & N. R. R. Co. (23 I. C. C., 672)	350
Southern Pacific Co. <i>v.</i> I. C. C. (219 U. S., 433)	24
Southern Pacific Co., Ownership of Oil Steamers (34 I. C. C., 77)	166
Southern Pacific Co., Ownership of Schooner Pasadena (33 I. C. C., 476)	79
Southern Pacific Terminal Co. <i>v.</i> I. C. C. (219 U. S., 498)	273
Southern Ry. Co. <i>v.</i> Reid (222 U. S., 424)	191
Southern States Supply Co. <i>v.</i> S. Ry. Co. (31 I. C. C., 30)	129
Southwestern Missouri Millers' Club <i>v.</i> M., K. & T. Ry. Co. (22 I. C. C., 422)	200, 347
Southwestern Missouri Millers' Club <i>v.</i> St. L. & S. F. R. R. Co. (26 I. C. C., 245)	64, 215
Spiegle <i>v.</i> S. Ry. Co. (25 I. C. C., 71)	449
State of Iowa <i>v.</i> C., St. P., M. & O. Ry. Co. (28 I. C. C., 64) ..	282
State of Iowa <i>v.</i> C., St. P., M. & O. Ry. Co. (29 I. C. C., 539) ..	282
State of Kansas <i>v.</i> A., T. & S. F. Ry. Co. (27 I. C. C., 673) ..	231, 379
State of Oklahoma <i>v.</i> C., R. I. & P. Ry. Co. (15 I. C. C., 42) ..	277

	Page.
Stock & Sons v. L. S. & M. S. Ry. Co. (31 I. C. C., 150)	482
Sunderland Bros. Co. v. C., B. & Q. R. R. Co. (21 I. C. C., 632) .	429
Superior Commercial Club v. G. N. Ry. Co. (24 I. C. C., 96) . .	584
Superior Commercial Club v. G. N., Ry. Co. (25 I. C. C., 342) .	382, 583
Tap Line case (23 I. C. C., 277)	677, 710
Tap Line case (23 I. C. C., 549)	116, 677, 710
Tap Line case (31 I. C. C., 490)	117, 605
Tap Line cases (234 U. S., 1)	117, 242, 596
Texas & N. O. R. R. Co. v. Sabine Tram Co. (227 U. S., 111) .	80, 214, 274, 352
Texas & P. Ry. Co. v. Abilene Cotton Oil Co. (204 U. S., 426) . .	191
Texas & P. Ry. Co. v. I. C. C. (162 U. S., 197)	253
Texas & P. Ry. Co. v. U. S. (205 Fed., 380)	473
Texas Common Point case (26 I. C. C., 528)	304
Traffic Bureau, Merchants Exchange v. C., B. & Q. R. R. Co. (14 I. C. C., 317)	443
Traffic Bureau, Merchants Exchange v. C., B. & Q. R. R. Co. (22 (I. C. C., 496)	443
Transit case (24 I. C. C., 340)	450
Transit case (26 I. C. C., 204)	632
Union Pacific R. R. Co. v. Updike Grain Co., (222 U. S., 215) . .	443
Union Tanning Co. v. S. Ry. Co. (26 I. C. C., 159)	232
United States v.:	
B. & O. R. R. Co. (225 U. S., 306)	242, 454
B. & O. R. R. Co. (231 U. S., 274)	242, 454
B. & O. S. W. R. R. Co. (226 U. S., 14)	242
L. & N. R. R. Co. (195 Fed., 88)	190
P. & A. Ry. & N. Co. (228 U. S., 87)	191
Terminal R. R. Asso. of St. Louis (224 U. S., 383)	456
Terminal R. R. Asso. of St. Louis (236 U. S., 194)	454
Vulcan Coal & Mining Co. v. I. C. R. R. Co. (33 I. C. C., 52) . .	185
Washington, D. C., Store-Door Delivery (27 I. C. C., 347)	152
Washington Milling Co. v. N. & W. Ry. Co. (27 I. C. C., 546) . .	137
West Virginia Lake Coal case (22 I. C. C., 604)	418
Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co. (33 I. C. C., 33)	103, 656, 676
34 I. C. C.	

INTERSTATE COMMERCE COMMISSION.

CHARLES C. McCHORD, OF KENTUCKY, Chairman.

JUDSON C. CLEMENTS, OF GEORGIA.

EDGAR E. CLARK, OF IOWA.

JAMES S. HARLAN, OF ILLINOIS.

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HENRY C. HALL, OF COLORADO.

WINTHROP M. DANIELS, OF NEW JERSEY.

GEORGE B. MCGINTY, *Secretary.*

XXIX

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 6679.

STREEVER LUMBER COMPANY

v.

**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.**

Submitted July 3, 1914. Decided April 26, 1915.

Reasonableness of charge of \$40 for feeding, watering, and resting a carload of horses at Schenectady, N. Y., found not to be within the jurisdiction of the Commission. Complaint dismissed.

***William Rooney* for complainant.**

***J. E. McLean* for Delaware & Hudson Company.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Ballston Spa, N. Y. By complaint, filed February 28, 1914, it alleges it was subjected to unreasonable and unduly prejudicial charges at Schenectady, N. Y., for feeding, watering, and resting a carload of 20 horses consigned from Scotland, S. Dak., to Ballston Spa. The Delaware & Hudson Company will hereinafter be referred to as defendant.

The shipment arrived at Schenectady at 6.45 a. m., March 1, 1912, without a caretaker. Defendant's agent at Schenectady was advised by the train dispatcher that it was necessary to feed, water, and rest the horses in compliance with the federal 28-hour law before forwarding them to destination. Defendant had no facilities for feeding, watering, and resting live stock at Schenectady, and the agent intrusted the shipment to a local liveryman, who performed the necessary services at a charge of \$40, which defendant paid, but later collected from complainant together with the freight charges at destination. Complainant alleges that the charges collected for the services involved were unreasonable and unduly prejudicial to the extent they exceeded \$10.

The act of June 29, 1906, known as the federal 28-hour law, prohibits carriers over whose line of road animals shall be conveyed from confining the same for a period longer than 28 consecutive hours, 36 hours in excepted cases, without unloading them in a humane manner into properly equipped pens, for rest, water, and feed for a period of at least five consecutive hours, and also provides that animals so unloaded shall be properly fed and watered during such rest, either by the owner or person having custody thereof, or in case of his default in so doing, then by the railroad transporting the same "at the reasonable expense of the owner."

It is the view of the Commission that it has not jurisdiction of the matter in issue. The act of June 29, 1906, known as the 28-hour law, does not vest in this Commission authority to enforce its provisions. It is a penal statute, and the penalty for its violation is explicitly stated. As its title indicates, the law in question was primarily intended to prevent cruelty to animals, a matter which is obviously without our jurisdiction. The Commission possesses only such powers as were conferred upon it by the act to regulate commerce, and nothing in that act requires carriers to rest animals in transit. Furthermore, it was primarily the duty of the owner or shipper of the horses to feed and water them, and the 28-hour law casts that duty upon the carrier only "in case of his (the owner's) default in so doing." It is clear, therefore, that the carrier, in supplying the animals with food, acted as the agent of the shipper. Whether or not the duty was performed with reasonable diligence is not within our province to determine.

An order will be entered dismissing the complaint.

84 I. C. C.

No. 6303.

HOOKER-HENDRIX HARDWARE COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

No. 6797.

STANDARD ROOFING COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted September 10, 1914. Decided April 12, 1915.

Carload rates for the transportation of prepared roofing paper and building paper from East St. Louis, Ill., St. Louis, Mo., and Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla., found to have been unreasonable. Rates for the future prescribed. Reparation awarded.

R. D. Sangster for complainants.

Thomas Bond, T. J. Norton, W. F. Dickinson, H. G. Herbel, F. G. Wright, and C. S. Burg for Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railroad Company and others.

J. M. Bryson for Missouri, Kansas & Texas Railway Company.

H. L. Traber for Missouri, Oklahoma & Gulf Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants in No. 6303, instituted November 1, 1913, and three of the complainants in No. 6797, instituted April 10, 1914, are corporations engaged in business at Muskogee, Tulsa, and McAlester, Okla. One of the four complainants in No. 6797 is the Patent Vulcanite Roofing Company, a corporation engaged in the manufacture and sale of roofing and building paper at Kansas City, Mo. All of the complainants, in connection with their respective lines of business, sell and distribute prepared roofing and building paper to consumers in Muskogee, Tulsa, and McAlester, and in contiguous territory. They allege that the rates on the commodities named from St. Louis, East St. Louis, and North St. Louis, hereinafter referred to as St. Louis, and from Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla., are unreasonable *per se*, unjustly discriminatory, and unduly prejudicial to Muskogee, Tulsa, and McAlester as compared

with rates from St. Louis to Kansas City, and from St. Louis and Kansas City to Coffeyville, Kans., Joplin, Mo., and Fort Smith, Ark. The establishment of reasonable and nondiscriminatory rates is asked and reparation on past shipments. Rates are stated herein in cents per 100 pounds.

Muskogee is served by the main line of the Missouri, Kansas & Texas Railway, by the main lines of the Missouri, Oklahoma & Gulf and of the Midland Valley railways, and by a branch line of the St. Louis & San Francisco Railroad. McAlester is served by the Missouri, Kansas & Texas and the Chicago, Rock Island & Pacific railways, Tulsa by the main line of the St. Louis & San Francisco Railroad, and by the Missouri, Kansas & Texas, the Atchison, Topeka & Santa Fe, and the Midland Valley railways.

Most rates from St. Louis to points in Oklahoma are constructed on a group basis, the state being divided into nine groups for the adjustment of class and commodity rates generally. For the traffic involved there are in general only two groups. The first or principal group is embraced roughly within the area east and north of the main lines of the Chicago, Rock Island & Pacific Railway from Caldwell, Kans., south to Chickasha, Okla., thence east to the state line. At the time the complaints were filed the group rate from St. Louis to points within this group, including Tulsa, Muskogee, and McAlester, was 47 cents; 52 cents to points in the other group. The rates concurrently in effect from Kansas City were 36 cents to Muskogee and Tulsa and 38 cents to McAlester. On August 16, 1914, after the complaints herein had been filed, and after hearing in No. 6303, and admittedly as a result of that hearing, the rates from St. Louis were reduced to 41 cents to Muskogee and 44 cents to Tulsa and McAlester. The rates from Kansas City were reduced simultaneously to 30 cents to Muskogee and 33 cents to Tulsa and McAlester. The reduced rates are not satisfactory to complainants, who adhere to their original contention that the rates should not exceed 27 cents from St. Louis and 19 cents from Kansas City to all three destination points.

The western classification rates roofing paper and building paper the same, fifth class in straight or mixed carloads, minimum 30,000 pounds, but exceptions are general for the rates to southwestern territory, and the class C basis marks the general level of the rates on the commodities involved to practically all such territory except Oklahoma. To Oklahoma points and points in southeastern Kansas and southwestern Missouri commodity rates prevail. The following table compares the class and commodity rates and distances from St. Louis and Kansas City to Muskogee, Tulsa, and McAlester with the class and commodity rates and distances to various other points, including the points alleged to be preferred:

To—	From St. Louis, Mo.				From Kansas City, Mo.			
	Miles.	Commod-ity.	Class 5.	Class C.	Miles.	Commod-ity.	Class 5.	Class C.
Kansas City, Mo.....	277	11	22	17	.....	.....	.....	.....
Joplin, Mo.....	332	17	28	21½	155	9	18	.....
Coffeyville, Kana.....	418	23½	36	27	168	12½	28	.....
Fort Smith, Ark.....	416	34	44	34	328	20	37	.....
Texas common points.....	800	58	75	58	.....	53	70	.....
Oklahoma City, Okla.....	543	47	63	46	343	38	46	32
Muskogee, Okla.....	457	41	48	35	254	30	36	25
Tulsa, Okla.....	424	44	52	35	257	33	36	25
McAlester, Okla.....	566	44	53	39	316	33	44	30

It will be observed that to Joplin, Coffeyville, and Fort Smith, the competing points alleged to be preferred, and likewise to Texas common points, the rates from St. Louis are in all cases lower than fifth class, and as low as or lower than the class C basis, while the commodity rates to Muskogee, Tulsa, and McAlester, the complaining points, although somewhat lower than the fifth-class rates, are materially higher than the class C rates. The discrepancy is accentuated by the following comparisons, showing the ton-mile earnings under the commodity rates from St. Louis to the points named and the differences between the commodity rates and the fifth-class rates to the same points:

To—	From St. Louis.				
	Miles.	Commod-ity rate.	Ton-mile revenue.	Fifth-class rate.	Commod-ity rate lower than fifth class.
Joplin, Mo.....	332	17	Mills. 10.2	28	11
Coffeyville, Kana.....	418	23½	11.2	36	12½
Fort Smith, Ark.....	416	34	16.3	44	10
Texas common points.....	800	58	14.5	75	17
Oklahoma City, Okla.....	543	47	17.3	63	16
Muskogee, Okla.....	457	41	17.9	48	7
Tulsa, Okla.....	424	44	20.8	52	8
McAlester, Okla.....	566	44	15.5	53	9

The following comparisons are made by complainants to show that, as compared with rates to the points alleged to be preferred, the rates to Muskogee are relatively higher on roofing and building paper than on other commodities:

From St. Louis to—	Fruits and vegetables, canned.	Iron and steel arti-cles—angle bar, etc.	Roofing, sheet, etc.	Structural iron and steel.	Soap.
Joplin, Mo.....	28	28	28	28	28
Coffeyville, Kana.....	36	36	36	36	36
Fort Smith, Ark.....	32	30	30	35	37
Oklahoma City, Okla.....	46	50	50	55	58
Muskogee, Okla.....	39	37	37	42	45

The rates cited in this table to Joplin are the fifth-class rates in every instance, and the commodity rates cited to Muskogee exceed them by from 9 to 17 cents, while the rates on roofing and building paper to Muskogee exceed the rates to Joplin by 24 cents. The same rates to Muskogee exceed the rates on the commodities named to Coffeyville by from 1 to 9 cents, as compared with a spread of 17½ cents in the rates on building and roofing paper. Except on canned goods, the usual difference in rates between Muskogee and Oklahoma City is 13 cents in favor of Muskogee, while on roofing and building paper, however, Muskogee has an advantage of only 6 cents. Numerous other comparisons made by complainant indicate the same general relationship.

Prepared roofing paper is packed in tight, compact rolls weighing 35, 45, or 55 pounds, according to the grade of the paper. It is not easily damaged in transit and does not require special care in handling. The minimum weight under the commodity rates assailed is 40,000 pounds, but the average loading is stated to be about 45,000 pounds. The average value of a carload of prepared roofing paper is about \$775. On the basis of the minimum weight of 40,000 pounds, the present rates from St. Louis to the various points named yield the following car and car-mile earnings:

To—	Per car.	Per car-mile.
		<i>Cents.</i>
Kansas City.....	\$44	15.9
Joplin.....	68	20.48
Coffeyville.....	94	22.48
Fort Smith.....	136	32.6
Muskogee.....	164	35.88
Tulsa.....	176	41.5
McAlester.....	176	31.09

The average earnings per car and per car-mile are higher, however, than indicated above, for the reason that the average loading exceeds 40,000 pounds, as previously stated. Statements filed by complainants on shipments received by them show the following average weights: 42,937 pounds to Muskogee, 48,560 pounds to Tulsa, and 42,216 pounds to McAlester.

Although the rates complained of are attacked as unreasonable, the gravamen of the complaint is that the rate adjustment described is unjustly discriminatory. Complainants assert that their natural trade territory comprises, roughly, the eastern half of the state of Oklahoma. Their principal competition comes from Kansas City, Coffeyville, Joplin, and Fort Smith, although the competition from Fort Smith is said not to be as keen as from the other points named. Because of the alleged unreasonable and discriminatory carload rates to Oklahoma distributing points, jobbers at those points are

said to be unduly disadvantaged in making less-than-carload shipments to consuming points in the neighboring territory in competition with jobbers at the points alleged to be preferred.

Complainants submitted a statement showing the "laid-down cost" of a 35-pound roll of prepared roofing paper at various points in Oklahoma, the cost stated representing the price of a 35-pound roll f. o. b. St. Louis, the proportion of the carload rate from St. Louis to the jobbing point, and the less-than-carload rate from the jobbing point to the consuming point. Numerous local points in Oklahoma are named, and the statement shows that although Muskogee, for example, is nearer than Joplin and Coffeyville to about 90 per cent of the consuming points named, it is at a disadvantage in the total in and out rate in most cases. Complainants do not contend that the rates involved should be adjusted to place the complaining points on a rate parity with the points alleged to be preferred, but urge that this comparison shows real discrimination against Muskogee, Tulsa, and McAlester.

Defendants reply that the rates from St. Louis to Kansas City, Joplin, and Coffeyville are not fairly comparable with the rates from St. Louis to the Oklahoma points involved, for the reason that the rates from the Mississippi River to Kansas City are highly competitive and that the rates to Joplin and Coffeyville are depressed by the influence of the rates to Kansas City. Statements were submitted to show that the rates on prepared roofing and building paper from St. Louis to Kansas City, Joplin, and Coffeyville, and from Kansas City to Joplin and Coffeyville, are lower in most instances than the commodity rates on other articles rated fifth class in the western classification. One of defendants' witnesses admitted, however, that after the hearing in No. 6303 the carriers felt that the rates to Muskogee were higher than they should be, in comparison with the rates to Joplin, Coffeyville, and Fort Smith, and accordingly made the reductions previously described, effective August 16, 1914. The same witness stated that in making the reductions only the relation between the rates to Fort Smith and Muskogee was considered, but admitted further that the maintenance of a rate of 41 cents from St. Louis to Muskogee while a 17-cent rate obtains to Joplin is not a reasonable adjustment, suggesting, however, that the remedy was to raise the rate to Joplin.

Muskogee, Tulsa, and McAlester are in competition with each other in the local distribution of the commodities involved. They are presumably in competition to some extent with Oklahoma City, to which point the rate is higher. Complainants earnestly insist that they are seriously handicapped by the competition from the points specifically alleged to be unduly preferred. To meet this

situation, one of the complainants in No. 6797, who has houses in both Tulsa and Muskogee, has also recently established a house in Kansas City for the purpose, as stated by counsel, "of selling these goods on an equal basis with the disastrous competition otherwise encountered therefrom." The Patent Vulcanite Roofing Company, another complainant in No. 6797, is located at Kansas City. It is a branch of a Chicago concern, and its interest in these cases is principally to secure reasonable rates from Kansas City and from St. Louis, to which latter point the Chicago rate sustains a fixed relationship. None of the points alleged to be preferred was represented at the hearing in these cases. The general relationship is manifestly an important one, affecting many jobbing points over a considerable territory. In view, however, of the somewhat complex situation growing out of apparently conflicting interests, even as between complainants themselves, we shall not, upon the record before us, express any view in respect of the discriminatory situation.

Upon consideration of all the facts and circumstances of record we are of the opinion and find that the rates complained of are and for the future will be unreasonable in so far as they exceed the following:

From—	To Muskogee, Okla.	To Tulsa, Okla.	To McAlester, Okla.
St. Louis, Mo., and East St. Louis, Ill.....	37	38	40
Kansas City, Mo.....	26	27	28

These rates, with minimum weight not to exceed 40,000 pounds, will be prescribed as maxima for the future.

In No. 6303 the T. H. Rogers Lumber Company asks reparation on two carloads shipped from St. Louis, billed from North St. Louis, to Muskogee, September 19, 1912, and May 29, 1913, and on two carloads shipped from Kansas City to Muskogee November 1, 1911, and December 10, 1912. The shipments from St. Louis consisted of a carload of roofing paper weighing 43,000 pounds and a mixed carload containing 33,100 pounds of roofing paper and 7,800 pounds of roof coating. Complainant named paid freight charges on these shipments in the sum of \$394.33 at a rate of 47 cents per 100 pounds. The fourth-class rate of 64 cents was applicable on less than carload shipments of roof coating. The current commodity item now includes roof coating. The shipments from Kansas City contained 47,500 and 38,300 pounds of roofing paper. Complainant named paid charges thereon in the sum of \$308.88, at a rate of 36 cents per 100 pounds. All of these shipments were delivered by the Missouri, Kansas & Texas Railway Company. We further find that the com-

plainant, T. H. Rogers Lumber Company, made the shipments in accordance with the foregoing statement of facts, and paid charges thereon at rates herein found to have been unreasonable; that complainant named has been damaged to the extent of the difference between the amount paid and the amount that would have accrued at the rates herein found reasonable, and is, therefore, entitled to reparation from the Missouri, Kansas & Texas Railway Company in the sum of \$165.28, with interest from June 7, 1913.

The other complainant in No. 6303, Hooker-Hendrix Hardware Company, asks reparation on a shipment made in October, 1912, from St. Louis to Muskogee, but no reparation can be awarded, as the testimony discloses that this complainant paid the freight charges on the shipment at destination but deducted the amount of such charges from the invoice.

An officer of the Standard Roofing Company, one of the complainants in No. 6797, appeared as a witness at the hearing in that case and submitted a statement covering shipments of prepared roofing and building paper shipped from St. Louis to Muskogee and Tulsa on which, he testified, his company paid the freight charges without receiving any freight allowance in return. Complainant Standard Roofing Company should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by the defendants we will consider the matter further with a view to issuing an order awarding reparation.

None of the other complainants in No. 6797 appeared at the hearing, and there is no testimony in the record by anyone having personal knowledge of the facts concerning the shipments on which these complainants ask reparation or the ultimate payor of the charges, and no award of reparation can be made with respect thereto.

An appropriate order will be entered.

34 I. C. C.

No. 7036.
DURHAM COAL & IRON COMPANY ET AL.
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted January 2, 1915. Decided April 29, 1915.

1. Rate on coke in carloads from Durham and Chickamauga, Ga., to Pacific coast terminals found unjustly discriminatory and unduly prejudicial to the extent that it exceeds the rate contemporaneously in effect to the same points from the Birmingham, Ala., district.
2. Minimum carload weight unreasonable when the cars in which the shipments are made are incapable of being loaded to that weight. Tariffs should provide that in such cases the marked capacity of the car used will govern.

O. L. Bunn for complainants.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company and the Southern Pacific Company.

J. F. Bowe for Atchison, Topeka & Santa Fe Railway Company.

F. D. McConnell for Central of Georgia Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainants are corporations engaged in mining coal and manufacturing coke, with principal offices at Chattanooga, Tenn. They operate coal mines and coke ovens at Durham, Ga., and coke ovens at Chickamauga, Ga. By complaint, filed June 22, 1914, they attack defendants' rate of \$10 per net ton for the transportation of coke in carloads, subject to a minimum weight of 50,000 pounds, from Durham and Chickamauga to Pacific coast terminal points, including San Francisco, Los Angeles, and points taking the same rate, (1) as unduly prejudicial to the extent that it exceeds the current rate of \$9 per net ton applicable to such shipments from the Birmingham, Ala., district; and (2) as unreasonable to the extent that it exceeds a rate of \$8 per net ton subject to a minimum carload weight of 40,000 pounds. Reparation is asked on past shipments.

Chickamauga and Durham are local points on the line of the Central of Georgia Railway, the former on the main line 14 miles southeast of Chattanooga, Tenn., and the latter at the end of a branch line 17 miles southwest of Chickamauga. The short-line distance from these points to the Pacific coast is via Memphis, Tenn., but traffic may also be routed via New Orleans. The haul to either gateway is over the lines of two or more carriers.

In marketing their coke on the Pacific coast complainants meet some competition from coke-producing points in Virginia, including Stonega and Appalachia, and from points in Pennsylvania, particularly Connellsville. The principal competition encountered, however, is that from the Birmingham district.

Prior to December 10, 1913, the rate per net ton on coke to Pacific coast terminals was \$8 from the Birmingham district and \$9.20 from Chickamauga and Durham. On that date the rate from all these points was made \$10 per net ton. A witness for defendants testified that these rates were increased in order to eliminate departures from the long-and-short-haul rule of section 4 of the act arising from the fact that such rates were lower than those from Chicago, Memphis, and New Orleans, through one of which points the traffic would pass on its way to the coast.

Subsequently the rates from the three gateways named above were reduced to \$9 per net ton. Effective April 30, 1914, the rate from the Birmingham district was reduced to \$9 per net ton, but no change was made in the rate from Chickamauga and Durham. Thereupon this complaint was brought.

Birmingham is 156 miles southwest of Chickamauga via the short line and 73 miles less distant from the Pacific coast. The local rate on coke from the Birmingham district to Memphis is \$1.35 per net ton, and there is also a proportional rate of \$1.10 per net ton applicable on shipments to points west of the Mississippi River. There is no corresponding proportional rate from Chickamauga and Durham to Memphis, and the local rate is \$1.45 per net ton. On shipments to the Pacific coast the lines east of Memphis demand their full local or proportional rates. On this basis of divisions the carriers east of Memphis receive 35 cents more per ton on shipments from Chickamauga and Durham than on those from the Birmingham district. Under the present rate of \$10 the carriers west of the Mississippi receive on this traffic 65 cents more per ton than on similar shipments from the Birmingham district.

From Birmingham proper the traffic may move via the St. Louis & San Francisco Railroad by a direct line through Memphis, or via the Louisville & Nashville through New Orleans. But it appears from the record that some of the coke ovens in the Birmingham district are located on the lines of carriers other than those mentioned and shipments therefrom involve hauls over the rails of two or more carriers, as do shipments from Chickamauga and Durham.

Birmingham is situated in a rate group embracing points in Ohio, Tennessee, Alabama, and a few points in Georgia. The destinations in California are also grouped. The rate is the same whether the shipments move through Memphis or take the longer route through

New Orleans. To certain points in Georgia, Alabama, South Carolina, and Florida the rates from Birmingham and Chickamauga are practically the same.

It is our view that the rate on coke in carloads from Durham and Chickamauga to Pacific coast terminals is, and will be, unjustly discriminatory and unduly prejudicial to complainants to the extent that it exceeds the rate contemporaneously in effect applicable to similar shipments from the Birmingham district. The question of divisions between the carriers is not in issue.

Complainants ask for the establishment of a rate of \$8 per net ton in order to enable them to meet the competition at destinations of coke transported by water from Europe. It appears from the record that such coke has been purchased at Oakland, Cal., for \$7.50 per net ton. The short-line distances from Chickamauga to Los Angeles and San Francisco are, respectively, 2,288 miles and 2,765 miles, and the per ton-mile earnings under the \$8 rate would be 3.49 mills and 2.89 mills. The record shows that complainants made no objection to the \$10 rate so long as the same rate applied from the Birmingham district. There is nothing in the record which would justify an order prescribing as a maximum the rate sought by complainants.

Complainants also allege that the minimum weight of 50,000 pounds applicable to this traffic is unreasonable to the extent that it exceeds 40,000 pounds. The minimum is the same from the Birmingham district as from Chickamauga and Durham. Complainants testified that no coke-rack cars, into which 50,000 pounds of coke can readily be loaded, are owned by the originating carrier, and that box cars of the ordinary size will not accommodate that weight. The larger box cars 40 feet and more in length are not always available when wanted, and in such cases the complainants' shipments are said to be materially delayed, with resulting loss of sales.

The record is insufficient for a finding of general application respecting the reasonableness of the 50,000-pound minimum. However, it is clearly unreasonable to base charges on this minimum when the cars in which the shipments are made are incapable of being loaded to that weight. Defendants should revise their tariffs so as to provide that the 50,000-pound minimum will not apply when cars of less capacity are furnished, and that in such case the marked capacity of the car used will govern.

No proof of damage was made, and no basis appears for reparation.

An order in conformity with these findings will be entered.

COMMODITY RATES TO PACIFIC COAST TERMINALS AND INTERMEDIATE POINTS.

FOURTH SECTION APPLICATIONS Nos. 205, 342, 343, 344, 349, 350,
AND 352.

IN THE MATTER OF APPLICATIONS FOR RELIEF FROM
THE PROVISIONS OF THE FOURTH SECTION OF THE
ACT TO REGULATE COMMERCE, AS AMENDED JUNE
18, 1910, WITH RESPECT TO COMMODITY RATES FROM
EASTERN DEFINED TERRITORIES TO PACIFIC COAST
TERMINALS AND INTERMEDIATE POINTS.

Submitted April 13, 1915. Decided April 30, 1915.

1. Plans suggested for constructing rates to intermediate back-haul points not approved. Carriers authorized to construct such rates by adding to terminal rates not more than 75 per cent of the local rates from the nearest terminal to destination, or by adding arbitraries to the terminal rates, varying with distance from the ports, such arbitraries to be not more than 75 per cent of the local rates, the aggregate not to exceed the maximum prescribed for intermediate points in this order.
2. Carriers authorized to extend terminal rates to the following Pacific coast ports: San Diego, San Pedro, East San Pedro, Wilmington, East Wilmington, San Francisco, and Oakland, Cal.; Astoria and Portland, Oreg.; Vancouver, Bellingham, South Bellingham, Everett, Tacoma, Seattle, Aberdeen, Hoquiam, and Cosmopolis, Wash.
3. Report and order of January 29, 1915, so modified as to permit maximum less-than-carload rates from the Missouri River to intermediate points on first and second class commodities of \$1.72 per 100 pounds when lower rates are applicable to coast terminals.

Appearances the same as in the original report, and in addition thereto, the following:

S. H. Brown for Union Bag & Paper Company.

F. M. Freer for Cincinnati Chamber of Commerce.

S. A. D. Glasscock for Bellingham Chamber of Commerce.

P. M. Hanson for National Enameling & Stamping Company.

J. T. McChesney for Everett Commercial Club.

J. W. McClune for Transportation Bureau of Tacoma Commercial Club.

W. P. Trickett and *T. A. McGrath* for Minneapolis Civic and Commercial Association.

F. W. Maxwell for Denver Transportation Bureau.

W. A. Mears for Seattle Chamber of Commerce.

Harry T. Mulloy for Fels & Company.

H. H. Williams and *B. F. Seggerson* for State Corporation Commission of New Mexico.

J. N. Teal for Chamber of Commerce of Portland and Astoria, Oreg., and Vancouver, Wash.

A. G. Young for American Sheet & Tin Plate Company.

F. H. Truax for Simmons Manufacturing Company and Metal Bed Association.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our report of January 29, 1915, in the above-entitled case, 32 I. C. C., 611, a suggestion was made that rates on schedule C commodities from eastern defined territories to stations intermediate to Pacific coast terminals in what was called back-haul territory might be made something less than full combination on the coast terminals. The carriers were asked to submit to the Commission a plan for the construction of rates to such intermediate points.

The lines leading to California terminals proposed to deduct from the terminal commodity rates 7 cents per 100 pounds, carloads, and 10 cents per 100 pounds, less than carloads, for basing rates, and to add thereto the full local rate from nearest terminal point to destination; this basis to apply eastward from the terminal until the point is reached at which the prescribed maximum rate is the same or less; the rate to a back-haul point not to be less than that to the terminal point.

The north coast lines submitted the following plan:

1. Rates to points in group 2 as shown in Transcontinental Freight Bureau tariff 4-L to be made by adding to the terminal rates not more than 5 cents per 100 pounds for carload shipments and 10 cents per 100 pounds for less-than-carload shipments.

2. The rates to points in group 3 as shown in Transcontinental Freight Bureau tariff 4-L to be made by using terminal basing rates 5 cents on carload and 10 cents on less-than-carload shipments less than the rates to Pacific coast terminals, and adding thereto the lowest rate applying from any Pacific coast terminal point; the rate thus made not to be less than that for a similar shipment to group 2 points as above stated, or more than that for a similar shipment to group 4 points as hereinafter stated.

3. The Washington-Idaho line to be the eastern boundary of group 4, except that the group would include points on the line of the Northern Pacific Railway from Pullman, Wash., to Lewiston, Idaho. Rates to points in group 4 to be made by the same method as to group 3, excepting on a limited list of carload commodities, embracing staple articles which are regularly shipped by sea upon which lower

rates are necessary to insure direct movement from the east and permit reasonable competition in the distribution from group 4 points as against shipment by sea and subsequent distribution of the same commodities from Pacific coast ports. This list of proposed commodity rates is designated schedule C-2, and is as follows. Rates are stated per 100 pounds:

Items as shown in Transcontinental Freight Bureau tariff 4-L.	From Chi- cago.	From Pitts- burgh.	From New York.
Canned goods, minimum 60,000 pounds, items 290 to 306.....	\$0.80	\$0.90	\$1.00
Coffee, green, minimum 60,000 pounds, item 380.....	.80	.90	1.00
Articles of iron and steel, including wire and nails: Minimum 80,000 pounds, items 632, 638, 666, 678, 680, 686, 688, 702, 704.....	.70	.75	.80
Minimum 50,000 pounds, items 632, 676, 678, 680.....	.80	.85	.90
Lye, concentrated, minimum 60,000 pounds, item 760.....	.80	.90	1.00
Paper, minimum 40,000 pounds, as described in items 866 and 876.	.80	.90	1.00
Soap, minimum 60,000 pounds, item 1046.....	.80	.90	1.00
Starch, minimum 40,000 pounds, item 1068.....	.90	1.00	1.10

4. An additional group to be provided to include those points on each road which are situated east of the eastern boundary of group 4, as above described, and west of the Idaho-Montana state line, the rates to points in this group, No. 5, to be made in the same manner as to points in group 4, but the rates on commodities named in schedule C-2 to be 10 cents per 100 pounds higher than the rates on the same commodities to points in group 4.

5. Rates from eastern defined territories to points east of the eastern boundary of group 5, as above described, to be limited by the maxima prescribed in the report and order of the Commission, but the rates on schedule C-2 commodities to be not more than 10 cents higher than on the same commodities to points in group 5.

The carriers also petition for modification of that part of the order which fixed maximum commodity rates upon less-than-carload shipments from Missouri River points to points intermediate to the Pacific coast. They ask for authority to establish as maxima on less-than-carload commodities from the Missouri River to intermountain territory rates made by taking 80 per cent of the present class rates from the Missouri River to Reno, Phoenix, and Spokane. This would result in rates, in cents per 100 pounds, of—

Class	1	2	3	4
Cents.....	200	173	146	126

Hearing on these proposals has been held, at which a full discussion was had concerning the merits thereof and objections thereto. The plan for constructing rates to back-haul points proposed by the lines leading to the California terminals would create a zone contiguous to the terminals to which terminal rates would apply. The

extent of this zone would be limited by the distances to which local rates of 7 cents, carloads, and 10 cents, less than carloads, would reach. It would, however, in substance include all of the points that have heretofore been accorded terminal rates. East of the easterly boundary of this zone the rates would increase with distance from the coast until they reached the maximum rates prescribed to intermountain points. Objection was made to this plan by the representative of the interests at the terminal cities upon the ground that it would have the effect of taking from the actual terminals a natural geographical advantage and of giving to many interior points, by an artificial adjustment, rates to which they are not entitled. Representatives of Nevada points also expressed disapproval of the suggested plan.

The plan proposed by the north coast lines was objected to by the representatives of the north coast terminal cities upon the grounds that it does not accord with the suggestions of the Commission, and that the special rates under schedule C-2 are lower than the competition at these interior points necessitates and are proposed with the intent of giving to Spokane an undue advantage over its coast competitors in the distribution of freight in the surrounding territory. Objections were also voiced by representatives of the Missouri River cities. Upon the other hand, the representatives of the Spokane interests contended that the special list of rates proposed to Spokane and surrounding points would not have the effect of creating undue preference at Spokane, and that the list of schedule C-2 commodities should be increased in order to permit Spokane and other points similarly situated to distribute freight in the territory contiguous thereto. It was also urged that since the rates from the Missouri River and all eastern defined territories to the Pacific coast terminals are blanketed, Spokane should be accorded the same rates from all territory Chicago and east.

In our former report we stated:

* * * As we view it, the Panama Canal is to be one of the agencies of transportation between the east and the west, but not necessarily the sole carrier of the coast to coast business. If the railroads are able to make such rates from the Atlantic seaboard to the Pacific coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease, and not increase, the burden that must be borne by other traffic. It will also give the shippers at the coast points the benefits of an additional and a competitive service.

We are fully mindful that one of the primary purposes of building this canal was to assist in the development and maintenance of an active, efficient, and profitable water service between the two coasts. We have carefully considered all of the criticisms and suggestions

offered, and the testimony presented at the former hearing, and have reached the following conclusions:

1. We should authorize a certain degree of relief from the requirements of the long-and-short-haul clause on this traffic to enable these carriers to more effectively compete with the water lines, but the rail carriers can not expect, and the Commission should not authorize, such a degree of relief as will secure to the rail lines the same percentage of the traffic to the terminals as they enjoyed prior to the opening of the canal.

2. They can secure a portion of the traffic to the terminals on these commodities by the establishment of the rates proposed, and such rates will afford some revenue in excess of the out of pocket cost involved.

3. The carriers should, within reasonable limits, be authorized to make such rates to intermediate points in the so-called back-haul territory as will induce the direct movement of freight to such points from the territories served by these lines.

4. The proportion of the freight hauled directly by the rail lines to the various destinations in this back-haul territory should be greater than the proportion hauled to the terminals and should increase as distance from the coast terminals increases.

5. The rates to all the coast terminal points being practically the same, and the situations at intermediate points being substantially similar via all lines, the same method of constructing rates to intermediate points should be followed by all lines.

When the rates to the coast cities are lower than to intermediate points because of controlling water competition, every inland point should take rates higher than those to the port cities, either by arbitraries varying with distance from the nearest port city or by proportions of the local rates from such ports to destinations. These rates should be fairly graded from the ports to the interior. We shall authorize the establishment of rates to back-haul points constructed by adding to the full rates to the terminals, arbitraries varying with distance, but not exceeding 75 per cent of the local rates from the nearest terminal, the aggregate not to exceed the maximum which we have prescribed for intermediate points in this order.

In our former report, *supra*, we said that the terminal rates should be confined to the points at which the Atlantic-Pacific steamship lines deliver their freight. At the time the testimony was taken the Panama Canal had been open but a few weeks, and the record then showed the delivery of this freight only at certain points. Proof has since been offered showing the delivery and receipt of this freight at East San Pedro, Cal.; Astoria, Oreg.; Vancouver, Bellingham,

South Bellingham, Everett, Aberdeen, Hoquiam, and Cosmopolis, Wash. The carriers serving these points have conceded that these points are entitled to the same rates as other terminal points. The circumstances and conditions at the points named appear to be similar to those found at the points named as terminals in the former report, and the order will be modified so as to permit the establishment of the terminal rates proposed to the points above named.

Our former report authorized the carriers to establish certain less-than-carload commodity rates to Pacific coast ports lower than those to intermediate points, with the proviso that where the rates on articles classified as first or second class in western classification from the Missouri River to the Pacific coast were \$1.50 per 100 pounds or more the rate to the Pacific coast should be the maximum at intermediate points; that in those instances in which the rates on such commodities were less than \$1.50 per 100 pounds the rates to intermediate points should not exceed \$1.50 per 100 pounds; that in those instances in which rates were made on commodities classified as third or fourth class from the Missouri River to the Pacific coast of \$1.25 or more per 100 pounds such rates must be maxima at intermediate points; and that in those instances in which the rates on such commodities to the Pacific coast were less than \$1.25 per 100 pounds the latter figure would constitute the maximum rate to intermediate points. In making rates from territories east of the Missouri River the carriers were authorized to add to the rates made from the Missouri River to intermediate points differentials of 25, 40, and 55 cents per 100 pounds from Chicago, Pittsburgh, and New York, respectively.

The carriers now ask modification of the restrictions as to the rates to intermediate points so that it may not be necessary to reduce any of the present rates to Salt Lake City, Utah, on either carload or less-than-carload commodities. In support of this petition it is urged that the Commission established many of the rates to Salt Lake City in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218. It is also urged that in a proceeding respecting class and commodity rates to Salt Lake City and other points, 32 I. C. C., 511, the Commission approved certain increases in some of these rates.

The rates established in the *Commercial Club of Salt Lake City case*, *supra*, were carload rates. Some of them were higher and some were lower than the maxima prescribed in the instant case. On the whole, however, the present rates to Salt Lake City on the majority of the more important commodities in this list are lower than the rates authorized to intermediate points in the present case. We are of the opinion that the order in this case with respect to carload rates should not be modified as requested.

A representative of the shipping interests of Denver, Colo., urged that the carriers be given sufficient relief from the requirements of the fourth section, particularly as to the less-than-carload commodity rates, to permit the maintenance of the present rates to Salt Lake City and all territory east thereof. There are comparatively few less-than-carload commodity rates from eastern defined territories to Salt Lake City. Not more than 25 per cent of the less-than-carload commodities on the list here considered are covered by commodity rates to Salt Lake City, and whatever movement of these commodities may occur to that point is under the class rates. These rates on the first four classes, respectively, from the Missouri River to Salt Lake City are \$2, \$1.70, \$1.50, and \$1.26 per 100 pounds. The rates proposed on these commodities to the Pacific coast vary from \$1.10 to \$1.75 per 100 pounds, and apply from all territories, Missouri River and east. The proposed rate to the coast on many of the first and second class items is \$1.50, and on a large part of the third and fourth class items it is \$1.25 per 100 pounds.

In authorizing these carriers to establish these rates to the Pacific coast, it is at the same time our duty to establish reasonable limitations upon the rates which may be applied on the same articles to intermediate points. The commodity rates proposed to the coast are so far below the class rates applying upon the same articles that any proper limitation of rates to intermediate points must, of necessity, in many instances restrict the rates to intermediate points to figures materially below the class rates. At the same time, since the transportation conditions under which these articles move under these less-than-carload commodity rates are in all respects similar to the conditions under which they move under class rates, the limitations in the rates to intermediate points may well vary with the class to which the commodity belongs. We are speaking of rates to that territory of which Phoenix, Ariz., Reno, Nev., and Spokane, Wash., are representative. The rates from the Missouri River on the first four classes to these points are, respectively, \$2.50, \$2.17, \$1.83, and \$1.58 per 100 pounds. The limitation which we have placed on third and fourth class articles produces a maximum rate from the Missouri River to these points which is approximately 80 per cent of the fourth-class rate, and the limitation which should be placed upon the rates on first and second class articles from the Missouri River to the same territory might properly bear approximately the same relation to the second-class rate. This will produce a maximum rate on first and second class articles from the Missouri River to intermediate points in those instances in which lower rates are applied to the Pacific coast of \$1.72 per 100 pounds.

We are not desirous of disturbing the commercial relation between Salt Lake City and Denver, which has been the subject of some litiga-

tion. The demands of other intermediate territories and the principles of the law, however, impel us to prescribe in these cases in which relief is afforded from the requirements of the long-and-short-haul rule the extent to which the carriers may be relieved. Our former order will be so modified as to permit the maintenance of a maximum less-than-carload commodity rate of \$1.72 per 100 pounds from the Missouri River to intermediate points in those instances in which lower rates are made from the Missouri River to the coast terminals upon commodities in this list that are rated first or second class. On all such articles taking rates of \$1.72 or more from the Missouri River to the coast terminals the rate to the terminals must be the maximum to intermediate points. Rates from the territories east of the Missouri River to the intermediate points may exceed the rates from the Missouri River by the differentials prescribed in our former report.

An order will be entered in consonance with the views above expressed.

84 I. C. C.

No. 6705.
A. P. BRANTLEY COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted January 25, 1915. Decided April 26, 1915.

Rates on sea-island seed cotton from points in northern Florida to Blackshear, Ga., not found unreasonable and complaint dismissed.

B. D. Brantley and N. W. Littlefield for complainant.

R. Walton Moore, C. J. Rixey, jr., and W. H. Fowle for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in ginning sea-island cotton at Blackshear, Ga., a local station on defendant's line approximately 10 miles northeast of Waycross, Ga. By complaint, filed March 6, 1914, it alleges that defendant's rates for the transportation of sea-island seed cotton from 18 named points in Florida to Blackshear are unreasonable.

The following table names the rates from eight representative points of origin of which complaint is made, which rates became effective November 23, 1914. The rates are stated per 100 pounds on sea-island cotton in bales, bags, or sacks, in carloads, minimum 20,000 pounds.

To Blackshear from—	Miles.	Rate.
Bakers Mill, Fla.....	73	\$0.17
Marion, Fla.....	83	.18
Rixford, Fla.....	88	.18
Live Oak, Fla.....	93	.18
Pine Mount, Fla.....	103	.18
O'Brien, Fla.....	¹ 111	.19
Burlington, Fla.....	123	.21
Lake City, Fla.....	146	.22

¹ Mean distance.

About 1895 complainant erected at Blackshear, at a cost of approximately \$25,000, a large cotton-ginning plant for the purpose of ginning sea-island cotton. At that time there were only two other plants approaching that of complainants in size, one at Gainesville, Fla., the other at Madison, Fla. The plant at Madison was served by the Florida Central & Peninsula Railroad, now a part of the Seaboard Air Line Railway; the plant at Gainesville by the Savannah, Florida

& Western Railroad, which was absorbed later by the Plant system. Prior to the erection of complainant's mill the Florida Central & Peninsula Railroad and the Savannah, Florida & Western maintained special rates on unginned sea-island cotton in bulk from points in Florida to Gainesville and Madison. When the Plant system absorbed the Savannah, Florida & Western these special rates were established to Blackshear from certain near-by-points in Georgia and were later established also from the 18 Florida points involved. These rates were still in effect in 1902, when defendant absorbed the Plant system. The defendant immediately published higher rates to Gainesville. Effective July 18, 1913, the special rates previously in effect to Blackshear were canceled with provision for the application to carload shipments of the sixth-class rates. The commodity rates here assailed were, effective November 23, 1914, established on a basis somewhat lower than sixth class. We are asked to require the restoration of the rates in effect prior to July 18, 1913. The following table shows the rates asked from representative points of origin, together with the class rates effective between July 18, 1913, and November 23, 1914:

To Blackshear from—	Miles.	Rates prior to July 18, 1913.	Rates between July 18, 1913, and Nov. 23, 1914.
Bakers Mill, Fla.....	73	\$0.08	\$0.19
Marion, Fla.....	83	.08½	.20
Rixford, Fla.....	88	.09	.20
Live Oak, Fla.....	98	.09½	.23
Pine Mount, Fla.....	103	.10	.23
O'Brien, Fla.....	111	.10½	.24
Burlington, Fla.....	123	.11	.25
Lake City, Fla.....	146	.11	.26

¹ Mean distance.

Sea-island cotton, which is produced in the southeastern part of Georgia and the northern part of Florida, differs from the ordinary upland cotton in that it has a longer staple. It is used for different purposes and commands a higher price. Defendant explains that the rates in effect prior to July 18, 1913, were unreasonably low; that they were established by the Plant system when complainant's mill was built to encourage and foster the industry, and that defendant continued them after acquiring the Plant system because they applied only to one point, Blackshear. Later, somewhat similarly situated points, such as Quitman and Valdosta, Ga., requested the same rate as Blackshear. Defendant felt that it could not deny Quitman and Valdosta equal treatment, but also that it could not afford to extend the existing Blackshear basis and accordingly canceled both the intrastate and interstate rates in effect to Blackshear. The intrastate rates were canceled with the authority of the Railroad Commission

of Georgia, but were subsequently ordered restored by the same commission not only to Blackshear, but also between all Georgia points on defendant's line and the lines of certain other carriers, subject to further action by the commission, until a record of operations to June 30, 1915, under the restored rates should have been compiled. Defendant has also asked permission to increase its Florida intrastate rates on the traffic, which rates are on practically the same basis as the Georgia rates. Defendant also asserts that the average carload of unginned sea-island cotton weighs from 20,000 to 23,000 pounds; that it is worth approximately \$1,000; that shipped in bulk it is more liable to damage by fire than baled upland cotton, and that a ton of it ordinarily yields approximately 500 pounds of lint cotton and 1,500 pounds of cotton seed. Both baled lint cotton and cotton seed are said to load heavier than the original raw product and to earn more per car, which defendant contends to be the reverse of the relationship which should obtain. The revenue from 500 pounds of lint cotton in bales from Bakers Mill to Blackshear, for example, would be \$1.30, the revenue on 1,500 pounds of cotton seed \$1.24, making a total of \$2.54, as compared with \$1.60 from a ton of unginned cotton from and to the same points at the 8-cent rate asked. In other words, the lint cotton and cotton seed ginned from a ton of sea-island cotton would yield from 60 to 68 per cent more revenue than the raw material. Under the rate assailed from Bakers Mill to Blackshear the raw material earns from 21 to 38 per cent more revenue than the products. Defendant also compares the rates assailed with the rates asked and the rates on other commodities, as follows:

Car earnings for a haul of 100 miles.

	Minimum carload.	Value per car.	Car earnings.
	<i>Pounds.</i>		
Sea-island cotton (old rates).....	20,000	\$1,000.00	\$20.00
Sea-island cotton (present rates).....	20,000	1,000.00	36.00
Fertilizer under rates fixed by the Commission in 31 I. C. C., 458....	30,000	300.00	30.00
Oats.....	32,000	579.20	35.20
Corn.....	40,000	696.00	44.00
Yellow pine.....	48,000	130.00	28.00
Scrap iron.....	60,000	300.00	56.10
Fertilizer.....	30,000	300.00	28.05

Particular emphasis is laid on the comparison with the rate on fertilizer, which is a low-grade commodity of low value.

Complainant contends that any rates in excess of those in effect prior to July 18, 1913, are unreasonable and that the rates assailed practically prohibit complainant from buying cotton in Florida. Complainant was unable, however, to cite any rates voluntarily maintained by carriers as low as the rates asked. The low intrastate rates, moreover, have not finally been determined to be reasonable either by the state commission of Georgia or of Florida. Complainant's contention that the long-continued maintenance of the

rates sought indicates that they were reasonable and profitable was anticipated by defendant in its testimony to the effect that the former rates were established and maintained under peculiar circumstances and conditions and were never regarded as productive of their proper proportion of revenue. Complainant compared earnings on seed cotton in bulk and baled lint cotton, which showed that while the latter was much more valuable, the revenue from a carload would be only slightly greater than on a carload of cotton in the seed under the old rates and materially less under the present rates. The comparisons are unconvincing, however, for the reason that they are based on average carloads of 30,000 pounds for seed cotton and 12,000 pounds for baled cotton, which were mere estimates by complainant's witness from his general experience in the business. Defendant's figures, 20,000 to 23,000 pounds for baled cotton, were the result of the observation of billings on actual shipments. Complainant also compared the per car earnings under the rates assailed with those under rates on baled cotton from Florida points to Jacksonville and on baled cotton and cotton seed from Blackshear to Savannah. The comparisons favored complainant's contention, but again complainant used the high carload weight on seed cotton and the low weight on baled cotton mentioned above. It appears, moreover, that the traffic moves entirely under intrastate rates and that on business to Jacksonville defendant must meet rates of the Seaboard Air Line, which is the short line. Complainant also urges that it is entitled to lower inbound rates because Blackshear is a local point on defendant's line, so that defendant is assured of the outbound movement of the products ginned; also that the provision in the current tariff which prohibits the shipping of unginned cotton in bulk is unreasonable, because it adds materially to the cost of shipping the commodity. Defendant replies that the provision is necessary to prevent loss of the contents of a car in case of fire or accident. Complainant's contention that it is entitled to the former rates applicable because of the magnitude of its investment and its reliance on the former rates in making it is concluded by *So. Pac. Co. v. I. C. C.*, 219 U. S., 433.

In *Railroad Commissioners of Florida v. S. A. L. Ry. Co.*, 16 I. C. C., 1, which involved the relation of rates on sea-island cotton from Alachua, Gainesville, and Hawthorne, Fla., to Savannah, Ga., 39, 40, and 45 cents per 100 pounds, respectively, we held the 39-cent rate based originally on the Georgia distance tariff over the Seaboard Air Line to be reasonable. The distance from Alachua to Savannah over the Seaboard Air Line is 207.9 miles. The rates assailed are graded on a mileage basis, and the rate for 210 miles and over 200 miles is 26 cents.

Upon all of the facts of record we find that defendant has justified the present rates, and the complaint will be dismissed. An order will be entered accordingly.

No. 6894.
GRAY & SMITH
v.
PENNSYLVANIA COMPANY ET AL.

Submitted November 15, 1914. Decided April 26, 1915.

Where reparation is sought because of the loss of milling-in-transit service due to misrouting, the final destination of the shipment or its products must be shown in order to establish the fact and amount of damages. Complaint dismissed.

C. M. Gray and A. G. Smith in person for complainants.
L. E. Hinkle for Pennsylvania Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Charles M. Gray and Addison G. Smith, copartners trading under the firm name of Gray & Smith, millers and grain dealers, with their principal place of business at Wooster, Ohio. By complaint, filed May 8, 1914, they allege that they shipped a car of wheat from Perrysville, Ohio, to Johnson City, Tenn., which was misrouted by defendants, with the loss of milling-in-transit service at Johnson City, to complainants' damage in the sum of \$60. Reparation is asked. The car contained 1,000 bushels of wheat weighing 60,000 pounds and moved January 11, 1911. The claim was first presented October 23, 1912.

Complainants routed the car from Perrysville to Johnson City by way of Columbus, Ohio, Norfolk & Western to St. Paul, Va., and Carolina, Clinchfield & Ohio Railway to Johnson City, via which route a rate of 25½ cents per 100 pounds applied. Defendants misrouted the car by way of Columbus, Norfolk & Western to Bristol, Tenn., Southern Railway to Johnson City, over which route the rate was 27½ cents. Defendant Pennsylvania Company admits that its agent at Perrysville misrouted the car and that the difference of 2 cents per 100 pounds in the rate resulted in charges to Johnson City \$12 higher than the charges that would have accrued over the route specified, and this amount it has refunded to complainants.

The shipment was an "order, notify" shipment. The particular routing specified by complainants was inserted in the bill of lading to give the purchaser at Johnson City, the Model Mill Company, the

advantage of the milling-in-transit service accorded by the Carolina, Clinchfield & Ohio Railway at that point, which privilege was not accorded over the Southern Railway. When the car reached Johnson City the Model Mill Company, because of the loss of the transit service, refused to accept it unless complainant would afford protection to the extent of 6 cents per bushel, which was equivalent to \$60 on the whole shipment. Complainants paid the Model Mill Company this amount, and the only question remaining is whether complainants are entitled to reparation in this amount from defendants.

We have frequently held that a carrier's liability for misrouting extends not only to the excessive charges accruing from the imposition of a higher rate over the route of actual movement, but also to damages resulting from a loss of transit service applicable in combination with the route over which the shipment should have moved. *Conference Ruling No. 230; Newman Lumber Co. v. M. C. R. R. Co.*, 26 I. C. C., 97, 100. The real question presented, therefore, is whether complainants or the Model Mill Company lost the benefit of the transit service here involved, and if so, what damage was sustained.

Complainants introduced in evidence a statement submitted to them by the Model Mill Company showing the amount of the damage alleged and the basis of the computation. The statement placed the damage at \$67.83, based upon the differences between the joint through rates on the products from Perrysville to Spartanburg, S. C., and the local rate of 25½ cents from Perrysville to Johnson City, plus the local rate on the products from Johnson City to Spartanburg, thus implying that the products were actually shipped to the latter point.

The transit rules in effect at the time this shipment moved did not, as at present, require persons using the service to keep records showing inbound shipments of grain and the tonnage of outbound shipments of products set off against such inbound shipments, and it seems that no proof can be made of an outbound shipment of products to Spartanburg or elsewhere which was set off against the inbound shipment of wheat here involved. Complainants' witnesses did not know of their own knowledge whether the grain was actually milled at Johnson City or to what point the products, if any, were shipped. Spartanburg is the terminus of the Carolina, Clinchfield & Ohio Railway and the most distant point on that line to which the products could have been shipped. A letter from the Model Mill Company to complainants accompanying the statement above referred to indicated that Spartanburg was selected as a point of destination to illustrate the effect of the loss of transit on a shipment milled at Johnson City with a subsequent shipment of the product to Spartanburg. A letter from the Model Mill Company to the defendant

Pennsylvania Company was read into the record, which states that the car was—

bought to be milled at Spartanburg, S. C., and the difference between the local rate into Johnson City and the local rate out and the through rate from point of origin to Spartanburg is 6 cents per bushel, and, as the wheat came through Bristol, we could not use this wheat for the purpose for which we bought it, but had to *dispose of it locally and pay the local rate in and out.*

This statement is obviously contradictory, and leaves the question of the ultimate disposition of the car of the products hopelessly in doubt.

Defendants do not deny that complainants would probably be entitled to damages if the final destination of the product could be determined, and state that they have endeavored without success to ascertain this information from complainant and from the Model Mill Company. It is evident that if the shipment or the products thereof moved to a point on the Carolina, Clinchfield & Ohio Railway nearer than Spartanburg to Johnson City, the damage resulting from the loss of the transit service would be less than claimed, since the out-bound local rate would be less, and the lack of satisfactory evidence on this essential point precludes a finding as to the amount of the damages, if any, sustained. Complainants paid out \$60 because of the misrouting involved, but made the payment without sufficient investigation to justify a claim for reparation.

An order dismissing the complaint will accordingly be entered.

84 I. C. C.

No. 7249.
OTTO JAEGER
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted December 10, 1914. Decided April 26, 1915.

Complainant purchased a mileage book entitling him to 1,000 miles of transportation over defendants' lines. One of the conditions on which the book was sold provided that if the cover was presented to the proper bureau within 18 months from date of issue a refund of \$5 would be made to the purchaser. Complainant lost his book and did not find it in time to present it within the time limit. When he finally presented it to defendants in accordance with their tariff regulations, refund was refused; *Held*, That the regulation is not shown to be unreasonable. Complaint dismissed.

Otto Jaeger for complainant in person.

L. E. Hinkle for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a traveling salesman residing in Wheeling, W. Va. By complaint, filed September 4, 1914, he alleges that the conditions embodied in defendants' tariffs respecting the redemption of mileage book covers are unjust, unreasonable, and discriminatory, and that because of them he was subjected to the payment of unreasonable and discriminatory fares. Reparation is asked.

Complainant purchased a mileage book from defendants on January 4, 1912, for which he paid \$25. The book entitled the purchaser to 1,000 miles of transportation over defendants' lines, subject to certain conditions and good for one year from the date of sale. Defendants' tariffs contained the following pertinent provision:

When the fact is established that the owner of the mileage book has used it exclusively, a rebate of \$5 will be paid, provided the cover is presented to the mileage exchange order bureau of the Central Passenger Association, Chicago, Ill., within 18 months from the date of its issue, and if presented later refund will not be made.

Complainant presented the cover for refund of \$5 February 20, 1914. Refund was refused because the presentation was made more than 18 months after the book was issued.

Complainant states that on account of flood conditions existing in his vicinity during certain months of 1913 he was compelled to move his documents, and that many were misplaced and lost, includ-

ing the mileage book cover involved, and that he could not present the cover within the time specified for that reason. Complainant does not contend that the time limitation prescribed for redemption was intrinsically unreasonable, only that its enforcement under the circumstances stated is unreasonable. He asserts that if the cover had not been lost he would have presented it within 18 months, and that it is unjust for defendants to retain the extra \$5 for which they have given no service.

Defendants reply that the present interchangeable mileage ticket is the outcome of considerable discussion between carriers, traveling men, and various organizations; that the conditions of the contract were assented to at a mass meeting held in Chicago about six months prior to its adoption; that the purpose of putting these mileage books on sale was to meet the needs of the habitual traveler; and that to the extent of issuing this ticket that demand was recognized and indorsed by commercial organizations. They also assert that more questions enter into the use of mileage tickets than any other form of transportation; that such tickets must be handled intelligently; that the original purpose of a time limit within which mileage covers must be presented for redemption was largely to facilitate accounting and to prevent fraud; that for many years the average sale of the kind of ticket involved was 1,500 per day; that the tickets were interchangeable over 52 roads and started an account with each road and necessitated a definitely limited period within which redemption would be made; that the rebates unclaimed and those claimed and disallowed on account of nonpresentation in time would not equal one-tenth of 1 per cent of the number of tickets sold; that there has been no general objection to the time limit fixed for the redemption of the covers or any general demand by the traveling public or commercial men's organizations for a change in the time except in special cases like complainant's; and that the number of covers presented as late as 18 months after sale does not average one per month.

Upon all of the facts of record we find that the contract and tariff rules under which complainant's ticket was sold did not permit defendants to make the refund requested by complainant, and that the rule is not shown to have been either unreasonable or unjustly discriminatory.

An order dismissing the complaint will be entered.

24 L. C. C.

No. 6416.
McARTHUR BROTHERS COMPANY
v.
EL PASO & SOUTHWESTERN COMPANY.

Submitted October 13, 1914. Decided April 26, 1915.

Complaint alleges an agreement by defendant to transport free of charge workmen and supplies required by complainant, a contractor, for the performance of a construction contract with defendant and defendant's refusal to carry free inbound shipments of supplies to a milling company under contract with complainant to purchase grain for complainant's use, and to reship it to complainant as ordered; *Held*, An action for damages for breach of contract, beyond the jurisdiction of the Commission.

H. P. Blair and *R. B. Daniel* for complainant.

W. A. Hawkins for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in a general contracting business, with its principal place of business in New York, N. Y. By complaint, filed December 13, 1913, it alleges that in August, 1911, it entered into a contract with defendant to do the grading work on a new line of railroad projected by defendant, from Fairbank to Tucson, Ariz., and that defendant agreed therein to provide free transportation over its lines for all workmen, materials, and supplies required by complainant for the prosecution of the work; that complainant required large quantities of grain to feed its mules and horses employed upon the work, and arranged with the Globe Milling Company, of El Paso, Tex., to procure, store, and reship such grain as complainant might require; that the Globe Milling Company accordingly purchased large quantities of grain in Kansas, Nebraska, New Mexico, and Texas; that the grain so purchased was shipped either from points on defendant's lines or was delivered to defendant by other carriers at Tucumcari, N. Mex., for delivery at El Paso; that defendant transported such grain free of charge from El Paso to complainant's construction camps, but charged the full published rate for the movement which it performed to El Paso; and that the charges collected, aggregating \$2,635.86, have not been refunded, contrary to the express provisions of defendant's agree-

ment. Reparation is asked in the sum of \$2,635.86, increased by amendment to the agreed sum of \$3,846.77. Defendant concedes that the claim is just and is willing to make the refund demanded if so ordered. It is deterred only by the fear of being prosecuted for rebating, since complainant's name did not appear upon defendant's records of the transportation involved into El Paso, and it is not indisputable that complainant and not the Globe Milling Company was the owner of the grain at the time of the movement into El Paso.

The rates involved are not assailed as unreasonable or unjustly discriminatory or otherwise unlawful, and no actual violation of the act to regulate commerce is alleged. The action is therefore merely an action for damages for breach of contract and not for damages for a violation of the act. It is not this Commission's function to enforce contracts, either specifically or by awards of damage for their breach, but only to award damages to parties complainant entitled to damages on account of violations of the act to regulate commerce. The courts were complainant's proper tribunal, *Eddleman v. Midland Valley R. R. Co.*, 13 I. C. C. 103, even though the interpretation of complainant's contract involves the question of a possible violation of the provisions of the act against rebating. Since only the courts are empowered to enforce those provisions, an expression of opinion by the Commission would be entirely gratuitous and binding on no one.

An order will be entered dismissing the complaint for want of jurisdiction in the Commission to entertain it.

84 I. C. C.

No. 5595.

**NEW ORLEANS VEGETABLE GROWERS, MERCHANTS
& SHIPPERS' ASSOCIATION**

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 6, 1914. Decided April 26, 1915.

1. Rates and minimum weights on vegetables in carloads from New Orleans, La., to Chicago, Ill., and other northern markets not found unreasonable.
2. Complete revision directed of defendants' schedules of estimated weights applying on shipments of vegetables from New Orleans and other Louisiana points.
3. Fourth section violations alleged in complaint found to have been eliminated by defendants.
4. Rates on vegetables from New Orleans, La., to Kansas City, Mo., and to Buffalo-Pittsburgh territory found to be unjustly discriminatory to the extent that they exceed by more than 5 cents per 100 pounds the rates contemporaneously maintained from Southport Junction, La., and the discrimination required to be removed.

E. G. Davies and J. R. Reuter for complainant.

R. Walton Moore, R. V. Fletcher, A. P. Humburg, M. Carter Hall, and *William Burger* for Illinois Central Railroad Company; New Orleans & Northeastern Railroad Company; New Orleans, Mobile & Chicago Railroad Company; Yazoo & Mississippi Valley Railroad Company; and Louisville & Nashville Railroad Company.

C. A. Reddin for Frisco system and New Orleans, Texas & Mexico Railroad Company.

V. Schaffenburg for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association whose members are engaged in growing, packing, and shipping vegetables at New Orleans, La., and neighboring points. The complaint, filed March 1, 1913, is exceedingly general and quite obscure, but is apparently intended to allege violations of sections 1, 2, 3, 4, and 6 of the act. Summarized, the allegations are substantially that defendants' rates on vegetables in carloads from New Orleans, La., to Chicago, Ill., and other northern markets are unreasonable; that the minimum weights prescribed for carload shipments of vegetables from New Orleans to

various points are excessive and unreasonable; that defendants' commodity rates on vegetables are unreasonable as compared with class rates between the same points where the latter are lower than the commodity rates; that defendants' rates on vegetables in carloads from New Orleans to Cairo, Ill., Louisville, Ky., Chicago, Ill., and Kansas City, Mo., are unduly prejudicial as compared with rates to the same points on similar commodities from Amesville and Southport Junction, La.; that defendants have violated the long-and-short-haul rule of the fourth section by the publication of rates on vegetables in carloads from New Orleans and other Louisiana stations higher than the rates contemporaneously applicable to local shipments from other and more distant points in Louisiana over the same routes to the same destinations; and that defendants' tariffs specifically mentioned in the complaint violate the requirements of section 6 in that they fail to "plainly state" rates and rules governing the transportation of fruit and vegetables from and to the respective points mentioned in said tariffs and have not been construed alike for all shippers, defendants having assessed greater, less, and different charges than are provided by the said tariffs.

Complainant fails to state in what manner section 2 has been violated, and no specific evidence was adduced on the point. The evidence offered of the alleged violations of section 6 apparently was adduced only to show that the Illinois Central and other defendants habitually overcharged complainant's members, which is a matter for criminal proceeding rather than for a proceeding of this kind. In cases before us on complaint and answer we may take cognizance of overcharges only to order their repayment. Such an order would not be proper in this case for the reason that the complainant did not inform defendants definitely of the overcharges alleged and gave them no opportunity to investigate and answer the allegations. Complainant, moreover, apparently does not desire an order relative to past overcharges, which seem to have been of relatively minor importance and regularly to have been refunded by the carriers when called to their attention.

REASONABLENESS OF RATES.

Approximately 80 per cent of the total weight of all vegetable shipments from New Orleans consists of cucumbers, cabbage, potatoes, beets, beans, and vegetables of the lettuce family, and approximately 75 per cent of all cars of vegetables from New Orleans move to Chicago. In considering the reasonableness of the rates assailed we shall therefore consider only the rates on the vegetables named to Chicago. The remaining rates are relatively of slight importance, and defendants have volunteered to bring them into line with the other rates, which we propose to consider whenever it may become

necessary to do so. If they fail to do so, an appropriate proceeding may be instituted.

The rates assailed on the vegetables named to Chicago are: For lettuce, 60 cents per 100 pounds; beans, 55 cents; beets, 49.5 cents; cucumbers, 47 cents; cabbages, 44 cents; and potatoes, 40 cents. Complainant shows principally that the charges on the vegetables named to Chicago would be materially lower if the class rates applied instead of the commodity rates named. We have held repeatedly that adjustments of this kind are anomalous and require much to justify them. We are impressed, however, with defendants' explanation of the adjustment here assailed. In the last analysis the presumption that a commodity rate higher than the class rate which would otherwise apply is unreasonable is predicated on the antecedent presumption that the class rate is fixed at the highest reasonable figure. It is well understood that the influence of water competition has forced down the class rates between New Orleans and central freight association territory to a relatively low level. The vegetables involved require expedited service, and since they can not move by water are refused rates made on the basis of water competition.

Complainant also cites a rate of 48 cents per 100 pounds from Paradis, La., to Minnesota Transfer, a considerably longer haul than the 912-mile haul from New Orleans to Chicago, and the 42-cent rate maintained by the Texas & Pacific Railway from all stations on its lines in Louisiana and a few in Arkansas to Chicago. It is stated, however, that probably no lettuce has ever been billed to Minnesota Transfer. A rate of \$1.17½ applied to St. Paul and Minneapolis, and the 48-cent rate to Minnesota Transfer has been canceled since the hearing and no through rate now exists. The 42-cent Texas & Pacific rate cited is substantially lower than most of the rates assailed from New Orleans, but applies on all kinds of vegetables, and from an area so wide that the average haul to Chicago of shipments under it is many miles less than the distance from New Orleans to Chicago.

Defendants insist that the vegetable traffic is expensive to handle; that refrigerator cars are needed, which cost approximately \$400 more than a standard box car of the same construction, and which when loaded must be moved in special trains at a high rate of speed; that these trains involve an unusually large proportion of dead weight for the reason that the refrigerator cars used weigh much more than the average and in addition contain large quantities of ice, some in the car bunkers, some contained in the packages, which is hauled free, and that at least 75 per cent of the cars return empty, as loads can not be obtained for them southbound. It is also stated

that owing to the perishable nature of vegetables and their deterioration when delivery is delayed even a few hours the traffic involves an unusual number of damage claims and that the small loading possible further depresses the revenue derived. The carload minimum is 20,000 pounds, and as very few cars contain much more than 20,000 pounds of paying freight the revenue per car ranges from about \$80 to \$120, which does not seem unreasonably high for a haul of 912 miles.

Comparisons with rates from other points, some of which have been fixed or approved by this Commission, show that the rates assailed are not above the general level. In *Ponchatoula Farmers' Assn. v. I. C. R. R. Co.*, 19 I. C. C., 513, we considered the rates on lettuce, 58.5 cents per 100 pounds; beans, 52 cents; beets, 47 cents; cucumbers, 47 cents; and cabbages, 44 cents, to Chicago from Ponchatoula, La., 48 miles north of New Orleans, on the Illinois Central, particularly the rates on lettuce, beans, and cabbages, which constituted the principal movement. We approved all of the rates named except the rate on lettuce, which we ordered reduced to 55 cents. The rates assailed from New Orleans are clearly upon as low a level, since they are the same on cabbages and cucumbers and only 2.5 cents higher on beets, 3 cents higher on beans, and 5 cents higher on lettuce than the rates approved in the case cited, despite the longer haul from New Orleans. The 40-cent rate on potatoes from New Orleans to Chicago, moreover, is 2 cents lower than the rate which we approved to Chicago from Ruston, La., over 150 miles nearer than New Orleans to Chicago. *Rates on Cantaloupes and Potatoes from Ruston, La.*, 26 I. C. C., 101. The following table presents other rates comparable with those here in issue. Only the rates on lettuce are given, since they are fairly illustrative. Rates stated per 100 pounds.

From—	To—	Miles.	Rate.
New Orleans, La.....	Chicago, Ill.....	912	\$0.60
Jacksonville, Fla.....	Philadelphia, Pa.....	890	.78
Sanford, Fla.....	Baltimore, Md.....	921	.94
Jacksonville, Tex.....	Chicago, Ill.....	920	.57
De Soto, Miss.....	do.....	763	.90
Mobile, Ala.....	do.....	827	.90
Albany, Ga.....	do.....	898	.83
Charleston, S. C.....	do.....	1,027	.81

Upon all of the facts of record we find that the carload rates on potatoes, cabbages, cucumbers, beets, beans, and vegetables of the lettuce family from New Orleans to Chicago are not shown to have been or to be unreasonable.

MINIMUM WEIGHTS.

The minimum weight required for the rates assailed is 20,000 pounds. Complainant adduced some evidence to show that straight carloads of lettuce and other vegetables of the lettuce family can not be loaded to a weight of 20,000 pounds, and defendants admit this to be the fact. The figures introduced indicate that the heaviest loading practicable for a standard 32-foot refrigerator car is approximately 17,000 pounds. However, straight carloads of lettuce and kindred vegetables are seldom shipped, and mixtures containing other and heavier vegetables readily load to the minimum prescribed. A reduction in the minimum for lettuce would, therefore, in fairness require permitting the carriers to increase it for those vegetables which load heavier than 20,000 pounds. Such an adjustment in turn would require a change in the mixed carload rule, which permits the mixture of several varieties of vegetables at the carload rate, subject to a 20,000-pound minimum. We believe that the present arrangement is more advantageous to shippers. Complainant's representative in charge of the case evidently was of the same opinion, since he stated at the hearing that he still believed in the 20,000-pound minimum. The present arrangement may therefore be continued.

ESTIMATED WEIGHTS.

Some commodities, including the various green vegetables shipped by complainant's members, are difficult to weigh for the purpose of fixing freight charges. Where shipments move under refrigeration, the varying quantities of ice bunkered in the cars make it impossible to weigh the shipments accurately by running the cars over track scales. The individual packages often contain broken ice, too, in which case it is equally impossible to ascertain the actual weights of the vegetables. Scaling, moreover, consumes time, which can not well be lost where expedited service is a desideratum. Under such conditions a system of estimated weights is not merely a convenience, *Crutchfield, Woolfolk & Clore v. F. E. C. Ry. Co.*, 28 I. C. C., 274, 278, but a practical necessity. Complainant recognizes this, but objects to the system of estimated weights in force when the complaint was filed.

The objection is well founded. Defendants' published estimated weights are neither related to the actual weights of the commodities to which they apply, nor uniform. When rates are made with the expectation that they will be applied to actual weights, as in the case of the rates assailed, the use of estimated weights not clearly related to the actual weights is bound to result in charges different from the charges originally contemplated. If the estimated weights are too high, the charges are apt to be unlawful. Uniformity is even

more essential than accuracy, since the lack of uniformity must result in discrimination. Not only do defendants' estimated weights for the different sizes of containers of the same vegetable bear no proper relationship to each other, but those applicable on containers of the same size frequently differ for different points of origin and destination. Defendants do not appear to have brought about this situation deliberately. The system or scheme maintained is plainly unlawful and must be revised thoroughly.

The record contains no evidence of the actual weights of the different vegetables involved upon which a correct table of estimated weights could be based. It appears, however, that defendants intend to investigate the problem with a view to making all necessary corrections in their tariffs. The tariffs now on file show that much has been done since the hearing, and we shall not therefore enter any order relative to this subject. We shall, however, hold the matter open, and if in 90 days the revision has not been completed in a satisfactory manner the matter may be brought to our attention again, when we shall consider entering an appropriate order. The revision should include not only the weights applicable upon shipments from New Orleans, but from all other Louisiana shipping points upon defendants' lines. Otherwise there would be so much discrimination that the question would be no nearer settlement.

FOURTH SECTION VIOLATIONS.

Complainant asserts that a hamper of a certain size filled with beans is moved to Cincinnati at an estimated weight of 33½ pounds, whereas the estimated weight for the same shipment to Toledo is only 20 pounds, so that the charge to Toledo, the more distant point, is less than the charge to Cincinnati. It appears, however, that the carriers have remedied the situation by publishing identical estimated weights for shipments to both destinations. The only other violation of the fourth section called to our attention is that caused by the 42-cent rate of the Texas & Pacific on vegetables, previously described, on which shipments can move through New Orleans in connection with the Illinois Central, the Yazoo & Mississippi Valley, or the Louisville & Nashville, all of which roads maintained higher rates from New Orleans. This violation of the long-and-short-haul rule of the fourth section has since been remedied by the cancellation of the application of the 42-cent rate through New Orleans. The line that published the 42-cent rate had intended all shipments at that rate to move up the west side of the Mississippi River, and the evidence indicates that all the traffic did move that way.

UNDUE PREJUDICE AND DISADVANTAGE.

The rates assailed are alleged to prejudice New Orleans because materially lower rates on vegetables are maintained to named destinations from Southport Junction and Amesville, suburbs of New Orleans. The contention is without merit relative to the rates from Amesville, as those rates apply only over lines west of the Mississippi River, which are not concerned with the rates assailed. Southport Junction, however, is on the Yazoo & Mississippi Valley and the Illinois Central, only 3 or 4 miles from New Orleans. A rate of 55 cents per 100 pounds is cited on lettuce from Southport Junction to Kansas City, as compared with a rate of 71 cents from New Orleans. Even greater discrepancies inhere in the relationship of the rates on various vegetables from New Orleans and from Southport Junction to Buffalo-Pittsburgh territory, as is shown by the following table. Rates are stated in cents per 100 pounds:

Commodity.	From Southport Junction.	From New Orleans.
Lettuce.....	53	103.5
Celery.....	53	103.5
Spinach.....	53	90.9
Cucumbers.....	49	61.2
Beans.....	53	63

A representative of the carriers admitted at the hearing that many of the Buffalo-Pittsburgh rates were out of line and volunteered to readjust them, but no adjustment has been made.

The mere difference in distance in favor of Southport Junction is too slight and too small a part of the haul to Kansas City or to Buffalo-Pittsburgh territory to justify an advantage in rates over New Orleans. Defendants contend that there are special expenses incident to originating the traffic in New Orleans which warrant a substantial spread in the rates. The terminal charges at New Orleans are said to be unusual and out of all proportion to the terminal charges at Southport Junction. On the other hand, it appears that the carriers maintain a difference of only 5 cents per 100 pounds for a number of vegetables, while on others New Orleans and Southport Junction have identical rates. Upon the facts disclosed we find a greater difference than 5 cents per 100 pounds to be unduly prejudicial to New Orleans.

An order will be entered in accordance with the findings herein made.

No. 7259.
MEECH & STODDARD, INCORPORATED,
v.
GRAND TRUNK RAILWAY COMPANY OF CANADA ET AL.

Submitted November 19, 1914. Decided April 26, 1915.

To meet competition from Buffalo defendants maintain joint through rates on ex lake grain from Georgian Bay ports to numerous points in New England. Middletown, Conn., is a similarly situated point and competes with the other points involved in the purchase and sale of grain and grain products. Defendants refuse to extend the rates described to Middletown on the ground that the rates are unremunerative and that they desire not to enhance their losses; *Held*, That defendants unjustly discriminate against Middletown.

G. E. Meech and Frank Coles for complainant.

C. E. Dewey for Grand Trunk Railway Company of Canada.

S. S. Perry for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying, selling, and milling grain in Middletown, Conn. By complaint, filed September 3, 1914, it alleges that defendants unjustly discriminate against Middletown in that they charge materially higher rates than to numerous other stations in New England for the transportation of ex lake grain from Georgian Bay ports to Middletown. Just rates are asked and reparation.

The lower rates to New England and on both cotton piece goods and woollen piece goods from points on the Boston & Albany to New York and Brooklyn, N. Y., and New York delivery points. Upon protest by various persons located at Adams and North Adams, Mass., the schedules were suspended until March 31, 1915, that of 17th May until September 30, 1915. There were no protests from that of 17th May other than those at Adams and North Adams, and these in 1902 protested against the cotton piece goods rates alone. Similar pounds for proposed for the rates on cotton piece goods and woollen all-rail rate from New York to points on the Boston & Albany, in present rate of Adams, by way of the Boston & Albany in connection offered to the effect of New York & Hudson Steamboat Company up the Hudson to maintain from the same rates on co. bound rates were not protested.

The principal points of manufacture are grouped. At present the same rates apply to New York on woolen piece goods as on cotton piece goods, as follows: 13 cents per 100 pounds from zone 1, which embraces, roughly, points in central Massachusetts on the Connecticut River; 15 cents from zone 2, which extends from Worcester, Mass., on the south, to Hooksett, N. H., on the north, and from Boston and Salem, Mass., on the east, to Greenfield, Mass., on the west; 16 cents from zone 3, which includes points north of zone 2 in New Hampshire, Vermont, and Maine. From North Adams and points in the same vicinity the rate to New York is the same as from zone 1, 13 cents. The increases proposed to New York are 4 cents per 100 pounds from all of the originating territories described on cotton piece goods and 7 cents on woolen piece goods.

Some time prior to the filing of the suspended tariffs the Boston & Maine Railroad experienced financial difficulties that rendered necessary an increase in its revenue. The rates then in effect, moreover, involved a number of inconsistencies and discriminatory features which called for correction. In an effort to devise means to remedy the situation the railroad commissions of Massachusetts, Vermont, New Hampshire, and Maine held a number of informal hearings and conferences for the purpose of determining to what extent the Boston & Maine should be allowed to increase its rates. As a result of these joint conferences the Boston & Maine was authorized to increase its local rates, both class and commodity. Tariffs making such increases are now in effect. The rates approved on cotton piece goods and on woolen piece goods were third class and second class, respectively. The official classification which otherwise governs interstate traffic in the territory involved rates cotton piece goods rule 25, which prescribes 15 per cent less than second class, but not lower than third class.

A witness for the Boston & Maine testified that the investigation referred to disclosed that many joint rates published by the Boston & Maine were on a very low basis, and that the rates on cotton piece goods, to New York especially, were criticized as not bearing their fair share of the transportation burden; further, that under the basis of local rates the textile rates to intermediate Boston & Maine points were higher in many instances than the rates to New York and that a revision of the New York rates was necessary in order to remedy violations of the fourth section of the act. The Boston & Maine at first contemplated increases of 10 cents per 100 pounds in the rates involved from each of the zones described in the findings herein. Numerous conferences with shippers of textiles agreed that the proposed increases were excessive and should be assailed. The Boston & Maine also compares the proposed rates with the rates on cotton piece goods as

tween stations on its line. The distance from North Adams to New York over the Boston & Maine to Troy and the New York Central & Hudson River Railroad thence to destination is 196 miles. The suspended rate on cotton piece goods over this route is 17 cents. The rate on the same traffic over the Boston & Maine from North Adams to Boston, Mass., 142 miles, is 23 cents per 100 pounds.

It is urged that the 17-cent rate over the two-line haul to New York is lower than the 23-cent local rate to Boston; also that the class rates from North Adams to New York are below what should be deemed a normal basis. As previously stated, cotton piece goods are rated rule 25 in the official classification. The rate under rule 25 from North Adams to New York is 20 cents, which is also the third-class rate. The third-class rate approved by the state railroad commissions previously mentioned between local stations on the Boston & Maine for distances equal to the distance from North Adams to New York is 27 cents per 100 pounds. A statement filed on behalf of the Boston & Maine purports to show, moreover, that in many instances the local rates of that carrier on cotton piece goods to junction points with connecting carriers are higher than the present joint rates from the same points of origin to New York. The local rate on cotton piece goods from North Adams to Troy, for example, 48 miles, is 13 cents, the same as the present rate from North Adams to New York. The proposed rates on cotton piece goods are made to apply on the following articles made wholly of cotton, many of which are rated first class in official classification: Cotton piece goods, blankets, corduroy, crash, hosiery, knit goods, toweling, towels, underwear, and yarn.

Protestants' traffic does not move to New York over the Boston & Maine, but over the Boston & Albany and New York Central & Hudson River railroads. The Boston & Albany's present rates from common points were made in competition with the rates of the Boston & Maine, and the proposed rates are in line with the increases published by the Boston & Maine. With respect to the rates from North Adams to New York, a witness for the Boston & Albany testified that for a number of years prior to 1902 that road published a rate of 17 cents on cotton piece goods; that this rate was higher than that of the Boston & Maine and that no traffic moved under it; that in 1902 the Boston & Albany established a rate of 14 cents per 100 pounds from its North Adams branch to New York, the same as the all-rail rate published by the Boston & Maine; and that in 1906 the present rate of 13 cents was established. Further testimony was offered to the effect that it has been the policy of the Boston & Albany to maintain from points on its North Adams branch to New York the same rates on cotton piece goods as are maintained from points

on the Connecticut River north of Springfield, Mass., such as Easthampton and Holyoke, Mass., and that at about the same time that respondents published the increased rates assailed the New York, New Haven & Hartford Railroad increased its rates from the latter points to 17 cents on cotton piece goods and 19 cents on woolen piece goods, which rates are now in effect.

With respect to the increased rates proposed on woolen piece goods, the Boston & Albany urges that the values of such commodities are greater than the values of cotton piece goods, and that shippers conceded in conference that the rates thereon should be higher than on cotton piece goods. A representative of the New York, New Haven & Hartford Railroad testified that, effective December 21, 1914, the New Haven made increases in its rates to New York similar to the increases proposed in the tariffs under discussion; that there has been no complaint with respect to these rates; that because of the suspension of respondents' rates the New Haven now maintains higher rates to New York from junction points with respondents' lines and from intermediate points than respondents' present rates from such junction points and that the prohibition of the rates assailed naturally will compel the New Haven to reduce its present rates.

Protestants urge that cotton piece goods will not stand the increased rates proposed; that the present rates have been in effect for a number of years and apparently have been satisfactory to the carriers; and that the volume of this traffic has increased greatly during the last five years; also that the local rates generally of the Boston & Maine have been increased approximately 50 to 60 per cent. However, except for a comparison with rail and water rates from North Adams to New York, no evidence was offered to rebut respondents' showing of reasonableness.

On the proposed effective dates of the tariffs involved increases similar to those here assailed were made in the rates on the same traffic from New York to New England territory, which increases are now in effect with the exception of those under suspension.

Upon all of the facts of record we find that respondents have justified the proposed rates involved, and an order will be entered vacating the order of suspension.

84 I. C. C.

No. 6984.

GREAT WESTERN SUGAR COMPANY

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted October 1, 1914. Decided April 26, 1915.

Charges collected for the transportation of a carload of sugar from Memphis, Tenn., to Asheville, N. C., reconsigned to Charleston, S. C., not found to have been unreasonable. Complaint dismissed.

Caldwell Martin for complainant.

No appearances for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale sugar business, with its principal office at Denver, Colo. By complaint, filed June 8, 1914, it alleges that defendants collected unreasonable and unjustly discriminatory charges for the transportation of a carload of sugar from Memphis, Tenn., to Charleston, S. C. Reparation is asked and the establishment of reasonable reconsignment rules for the future.

The shipment weighed 87,652 pounds and was delivered to the initial carrier at Memphis November 22, 1912, consigned to Asheville, N. C. Freight charges were prepaid in the sum of \$394.43 at a rate of 45 cents per 100 pounds. By reason of inability to dispose of the shipment at Asheville, complainant requested defendants November 29, 1912, to divert the shipment to Charleston. Defendants effected the diversion as requested at Emory Gap, Tenn., a station on the Tennessee Central Railroad. A carload rate of 24 cents per 100 pounds, minimum 24,000 pounds, applied on the date of movement from Memphis to Charleston, and complainant contends that this rate should have been charged. The tariff of the Tennessee Central in force at the time which authorized reconsignment at the published through rates provided as follows:

When a car is stopped en route and delivered at a point short of the original destination, tariff rate in effect to such delivery point will be charged. If the delivery point is beyond the first destination, the rate to such delivery point will be charged, except

where rate to such delivery point is lower than the rate to first destination, in which case rate to first destination will be charged.

Complainant assails this rule as unreasonable and repugnant to our finding in *Central Commercial Co. v. L. & N. R. R. Co.*, 27 I. C. C., 114, where we said:

* * * That where the contents of the car remain unchanged, where the change of destination or route does not involve an out of line haul, and request is made in reasonable time, reconsignment and diversion on the basis of the through rate from point of origin to new destination, with a fair charge for the extra service performed, are reasonable practices, that the denial thereof is unreasonable and unlawful. * * *

While general in its application this holding is not conclusive of the case before us. The question presented was the reasonableness of a combination rate based on the point of reconsignment, while here the issue is the propriety of applying to a reconsigned shipment a higher specific through rate to final destination than was applicable to such destination on a direct shipment. The carriers participating in this movement contracted to handle the shipment from Memphis to Asheville at the published rate of 45 cents per 100 pounds. That rate is not attacked as unreasonable and it would be unfair to require defendants to bear the additional expense and risk incident to reconsignment and to a further haul of 292 miles beyond the original destination point at a rate 21 cents lower than the rate applicable to the transportation first demanded.

Upon all of the facts of record we find that the charges collected and the reconsignment rule involved are not unreasonable, and an order dismissing the complaint will be entered.

84 I. C. C.

No. 6618.

APPLICATION OF THE PENNSYLVANIA COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS INTEREST IN AND OPERATION OF THE PENNSYLVANIA-ONTARIO TRANSPORTATION COMPANY.

No. 6666.

APPLICATION OF CANADIAN PACIFIC RAILWAY COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS INTEREST IN AND OPERATION OF THE PENNSYLVANIA-ONTARIO TRANSPORTATION COMPANY.

Submitted September 1, 1914. Decided April 29, 1915.

Upon application of the Pennsylvania Company and the Canadian Pacific Railway Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue their interest in and joint operation of the Pennsylvania-Ontario Transportation Company; *Held:*

1. That the existence of through all-rail routes with joint rates applicable thereto in which the petitioners participate renders it possible for petitioners to compete with the boat line in which they are interested, within the meaning of the act.
2. Upon the facts of record the continued joint interest in and operation of the Pennsylvania-Ontario Transportation Company by the petitioners herein is in the public interest and will neither exclude, prevent, nor reduce competition on the route by water under consideration.

A. P. Burgwin for Pennsylvania Company.

C. W. Cottrell for Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

These cases involve applications of the Pennsylvania Company and the Canadian Pacific Railway Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue their interest in and joint operation of the Pennsylvania-Ontario Transportation Company. These cases were heard together.

The Pennsylvania Company is a corporation owning and operating a railroad with a line extending from points in Pennsylvania to Ashtabula Harbor, Ohio, a port on the southern bank of Lake Erie.

The Canadian Pacific Railway Company is a corporation owning and operating a railroad in the Dominion of Canada with a line running from Woodstock to Port Burwell, a port on the northern bank of Lake Erie.

The Pennsylvania-Ontario Transportation Company is a corporation owning and operating a car ferry plying on Lake Erie between the aforesaid ports of Ashtabula, Ohio, and Port Burwell, Canada. The capital stock of this company, \$375,000, consisting of 3,750 shares of a par value of \$100 each, is held jointly, one-third by the Pennsylvania Company, one-third by the Canadian Pacific Railway Company, and the remaining one-third by James W. Ellsworth & Company. It has no bonds outstanding and no obligations of any kind other than those for current expenses. Under its organization the Pennsylvania-Ontario Transportation Company has a board of directors consisting of six members, each one-third interest being represented by two directors. It appears that there is some sort of an operating agreement between the several parties interested in this car ferry by which the two petitioners alone share all expenses and profits. The contract itself is not a part of the record.

The Pennsylvania-Ontario Transportation Company owns and operates between Ashtabula Harbor, Ohio, and Port Burwell one steam vessel, the *Ashtabula*, having a registered tonnage of 1,525 tons, with ferry capacity of 32 cars. It is not equipped to carry passengers and files no tariffs with the Commission publishing passenger fares. The boat makes two trips per day.

It does not appear that either of the petitioners owns a line of railroad operating between the ports served by their boat, nor is either petitioner an integral part of any railway system owning such paralleling rails. It appears, however, that each of the petitioners is a party to through routes via the Buffalo gateway to and from the ports served by their boat, by which it is possible for them to compete with their boat for traffic within the meaning of the act to regulate commerce.

The car ferry primarily provides a short route for the transportation of coal to Canada and serves practically as a bridge over Lake Erie, by which there is a saving in rail haul of some 200 miles.

From a consideration of all the conditions and circumstances of record, the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration.

The Pennsylvania-Ontario Transportation Company will be required to file its tariffs in accordance with the provisions of the act to become effective by July 1, 1915. An order will be entered accordingly.

No. 6624.

APPLICATION OF THE GRAND TRUNK RAILWAY COMPANY OF CANADA, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH ITS INTEREST IN AND OPERATION OF THE ONTARIO CAR FERRY COMPANY, LIMITED.

Submitted June 24, 1914. Decided April 29, 1915.

Upon application, under section 5 of the act to regulate commerce, as amended by the Panama Canal act, of the Grand Trunk Railway Company of Canada to continue its interest in and joint operation of the Ontario Car Ferry Company, Limited, of Canada; *Held:*

1. That the participation of petitioner in through all-rail routes between the ports served by the ferryboat line in which it is interested makes it possible for the petitioner to compete with such ferryboat line within the meaning of section 5 of the act as amended by the Panama Canal act.
2. That the facts support a finding that the existing service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration. The Ontario Car Ferry Company will be expected to file its tariffs according to law to become effective by July 1, 1915.

L. C. Stanley for Grand Trunk Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

The application of the Grand Trunk Railway Company of Canada, filed in accordance with the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, involved its interest in and joint operation of the Ontario Car Ferry Company, Limited, and its interest in and joint operation of the Canada Atlantic Transit Company of the United States. This report concerns only this railroad's interest in and joint operation of the Ontario Car Ferry Company, Limited.

The Ontario Car Ferry Company, Limited, is a Canadian corporation, with a capital stock of \$500,000, divided into 5,000 shares with a par value of \$100 each. The Grand Trunk Railway Company of Canada is the owner of 2,497 shares, and the Buffalo, Rochester & Pittsburgh Railway Company is the owner of a like number of shares. The 6 remaining shares are held by the 6 directors of the ferry com-

pany, 3 of whom represent the interests of the Grand Trunk Railway of Canada, and the other 3 represent the Buffalo, Rochester & Pittsburgh Railway.

The Ontario Car Ferry Company owns one steel vessel, *Ontario No. 1*, of Canadian register, of car-ferry type, with a capacity on main deck of 28 loaded coal cars, and is equipped with passenger accommodations sufficient for 900 passengers, in addition to the crew, which plies between Genesee Dock, N. Y., a point on the Genesee River about 2½ miles south of Charlotte, N. Y., and Cobourg, Ontario, a distance of about 60 miles, connecting the terminus of the Buffalo, Rochester & Pittsburgh Railway at Genesee Dock with the terminus of the Grand Trunk Railway of Canada at Cobourg, Ontario. The company is building a sister ship, known as *Ontario No. 2*, of similar design and capacity to *Ontario No. 1*.

The Grand Trunk Railway Company of Canada operates a system of railway in the Dominion of Canada and in the United States, serving territory contiguous to the northern shore of Lake Ontario, reaching several ports on said lake, among others Cobourg, Ontario.

The Buffalo, Rochester & Pittsburgh Railway operates in the states of Pennsylvania and New York, its rails reaching the southern shore of Lake Ontario at Genesee Dock, N. Y.

It does not appear from the record that the petitioner owns rails paralleling the water route of the Ontario Car Ferry Company or that it is interested in a system of railway owning such paralleling rails.

From tariffs on file with the Commission it appears that the petitioner herein makes joint through rates all rail via the Niagara gateway from Cobourg, Ontario, to Genesee Dock, N. Y. By reason of the existence of these through route arrangements it is possible for the petitioner herein to compete for traffic with the ferryboats in which it is interested within the meaning of the act.

It appears from the record that this ferryboat line was primarily established to transport coal to Cobourg, Ontario, for company use of the Grand Trunk Railway Company of Canada. In addition to this coal traffic, however, the ferry company has developed a carload business in other freight. No less-than-carload freight is carried. During the summer months many tourist passengers are hauled to the Muskoka Lakes, Kawartha Lakes, and other resort regions in Ontario.

The Ontario Car Ferry Company is in competition for passenger business with the Canada Steamship Company. The passenger fares via the ferry line are the same as the fares via the other boat lines, and the freight rates via the ferry line are the same as the all-rail rates. It appears, however, that the ferry line is somewhat of a transportation convenience in that it relieves the congestion

incident to all-rail movement via the Niagara transfer and in that it provides a quicker transportation route between the two ports which it serves.

From a consideration of all the circumstances and conditions the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration.

The Ontario Car Ferry Company will be expected to file its tariffs with the Commission according to law, to become effective by July 1, 1915. An order will be entered accordingly.

84 L. C. C.

No 6671.

APPLICATION OF THE BUFFALO, ROCHESTER & PITTSBURGH RAILWAY COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE, AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS INTEREST IN AND OPERATION OF THE ONTARIO CAR FERRY COMPANY, LIMITED.

Submitted June 24, 1914. Decided April 29, 1915.

Upon application, under section 5 of the act to regulate commerce, as amended by the Panama Canal act, of the Buffalo, Rochester & Pittsburgh Railway Company to continue its interest in and joint operation of the Ontario Car Ferry Company, Limited, of Canada; *Held:*

1. That the participation of petitioner in through all-rail routes between the ports served by the ferryboat line in which it is interested makes it possible for the petitioner to compete with such ferryboat line within the meaning of section 5 of the act as amended by the Panama Canal act.
2. That the facts support a finding that the existing service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension of the petitioner's interest therein will neither exclude, prevent, nor reduce competition on the route by water under consideration. The Ontario Car Ferry Company will be expected to file its tariffs according to law, to become effective by July 1, 1915.

J. S. Havens for Buffalo, Rochester & Pittsburgh Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This case involves the application of the Buffalo, Rochester & Pittsburgh Railway Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue its interest in and joint operation of the Ontario Car Ferry Company, Limited.

The Ontario Car Ferry Company, Limited, is a Canadian corporation, with a capital stock of \$500,000, divided into 5,000 shares with a par value of \$100 each. The Buffalo, Rochester & Pittsburgh Railway Company is the owner of 2,497 shares, and the Grand Trunk Railway Company is the owner of a like number of shares. The 6 remaining shares are held by the 6 directors of the ferry company, 3 of whom represent the interests of the Buffalo, Rochester & Pittsburgh Railway Company, and the other 3 represent the interests of the Grand Trunk Railway of Canada.

The Ontario Car Ferry Company owns one steel vessel, *Ontario No. 1*, of Canadian register, of car-ferry type, with a capacity on main deck of 28 loaded coal cars, and equipped with passenger accommodations sufficient for 900 passengers, in addition to the crew, which plies between Genessee Dock, N. Y., a point on the Genessee River about 2½ miles south of Charlotte, N. Y., and Cobourg, Ontario, a distance of about 60 miles, connecting the terminus of the Buffalo, Rochester & Pittsburgh Railway at Genessee Dock with a terminus of the Grand Trunk Railway of Canada at Cobourg, Ontario. The company is building a sister ship, known as *Ontario No. 2*, of similar design and capacity to *Ontario No. 1*.

The Buffalo, Rochester & Pittsburgh Railway operates in the states of Pennsylvania and New York, its rails reaching the southern shore of Lake Ontario at Genessee Dock, N. Y.

The Grand Trunk Railway Company of Canada operates a system of railways in the Dominion of Canada and in the United States, serving territory contiguous to the northern shore of Lake Ontario, reaching several ports on said lake, among others Cobourg, Ontario.

It does not appear from the record that the petitioner owns rails paralleling the water route of the Ontario Car Ferry Company, or that it is interested in a system of railways owning such paralleling rails.

From tariffs on file with the Commission it appears that the petitioner herein makes joint through rates all rail via the Niagara gateway from Genessee Dock, N. Y., to Cobourg, Ontario. By reason of the existence of these through route arrangements it is possible for the petitioner herein to compete for traffic with the ferryboats in which it is interested within the meaning of the act.

It appears from the record that this ferryboat line was primarily established to transport coal to Cobourg, Ontario, for company use of the Grand Trunk Railway Company of Canada. In addition to this coal traffic, however, the ferry company has developed a carload business in other freight. No less-than-carload freight is carried. During the summer months many tourist passengers are hauled to the Muskoka Lakes, Kawartha Lakes, and other resort regions in Ontario.

The Ontario Car Ferry Company is in competition for passenger business with the Canada Steamship Company. The passenger fares via the ferry line are the same as the fares via the other boat lines, and the freight rates via the ferry line are the same as the all-rail rates. It appears, however, that the ferry line is somewhat of a transportation convenience in that it relieves the congestion incident to all-rail movement via the Niagara transfer and in that it provides a quicker transportation route between the two ports which it serves.

From a consideration of all the circumstances and conditions the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration.

The Ontario Car Ferry Company will be expected to file its tariffs with the Commission according to law, to become effective by July 1, 1915.

An order will be entered accordingly.

No. 6786.

APPLICATION OF GRAND TRUNK WESTERN RAILWAY COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS INTEREST IN AND OPERATION OF THE GRAND TRUNK MILWAUKEE CAR FERRY COMPANY.

Submitted July 26, 1914. Decided April 29, 1915.

Upon application of the Grand Trunk Western Railway Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue its interest in the Grand Trunk Milwaukee Car Ferry Company, *Held:*

1. That the interownership existing between the Grand Trunk Milwaukee Car Ferry Company, the Detroit, Grand Haven & Milwaukee Railway Company, the Grand Trunk Western Railway Company, and the Grand Trunk Railway Company of Canada is such as to bring the present application within the provisions of section 5 of the act.
2. That the existence of through routes via which joint through rates are applicable to Milwaukee, participated in by the petitioner, establishes a possibility of competition between the rails of the petitioner and the boats in which it is interested.
3. That the operation of the existing specified service by water line concerned is in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension of such interest and operation will neither exclude, prevent, nor reduce competition on the route by water under consideration. The Grand Trunk Milwaukee Car Ferry Company will be required to file its tariffs according to law, to become effective by July 1, 1915.

L. S. Stanley for Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

McCHORD, *Chairman*:

The Grand Trunk Western Railway Company petitions, under the provisions of section 5 of the act to regulate commerce, known as the Panama Canal act, to continue its interest in the Grand Trunk Milwaukee Car Ferry Company.

The petitioner is a corporation operating a line of interstate railroad between the points of Port Huron, Mich., and Chicago, Ill., via Durand, Lansing, and Battle Creek, Mich., and South Bend and Valparaiso, Ind. It owns no capital stock in any boat or line of boats operating on the great lakes or waters tributary thereto. A large majority of its capital stock, however, is held by individuals as trustees for the Grand Trunk Railway Company of Canada.

The Grand Trunk Railway Company of Canada through trustees controls and owns the capital stock of the Detroit, Grand Haven & Milwaukee Railway Company, a railroad operated from Detroit, Mich., in a westerly direction to Grand Haven, Mich., a point on the east bank of Lake Michigan, intersecting the line of the petitioning railroad at Durand, Mich. From the port of Grand Haven, Mich., the Detroit, Grand Haven & Milwaukee Railway reaches Milwaukee, Wis., on the west bank of Lake Michigan, by means of car-ferry boats owned by the Grand Trunk Milwaukee Car Ferry Company.

The Grand Trunk Milwaukee Car Ferry Company is a corporation organized under the laws of the state of Wisconsin, having an identity in ownership with the Grand Trunk Railway Company of Canada, the Detroit, Grand Haven & Milwaukee Railway Company, and the petitioning railroad. It does not appear in the record how or by whom the stock of the car-ferry company is held, but it does appear that these four companies have stockholders, directors, and officers in common, and are integral parts of the Grand Trunk Railway system.

It does not appear that the rails of the petitioning railroad or those of the Grand Trunk Railway system reach Milwaukee. It appears, however, from the record that the petitioning railroad makes joint rates from points on its line via Chicago to points beyond in the general territory west of Lake Michigan, to which rates are also made by the Detroit, Grand Haven & Milwaukee Railway via Grand Haven and the car ferry through Milwaukee. It also appears from a tariff published by the petitioning railroad, G. T. W. L. I. C. C. No. A-1630, that the petitioner makes joint through all-rail class rates via Chicago to Milwaukee.

It appearing that the petitioner has in effect through joint rates, all rail, to the port served by boats belonging to the same system of which it forms a part, it can but result that by reason of such through

routes and joint all-rail rates the petitioner may compete with the boats in which it has an interest and that a possibility of competition exists between such all-rail route and the route by water. *Lake Line cases*, 33 I. C. C., 699. It should be borne in mind that the all-rail route would be very indirect, and the probability of active competition between the two routes is remote.

It is contended on behalf of the petitioner that the purpose of the act with respect to waters "elsewhere" is necessarily controlled by the purpose of Congress with respect to the water routes through the Panama Canal, and that the purpose of the act with respect to the water routes through the Panama Canal was to prevent any railroad having an all-rail transcontinental route from owning a boat line operating via such water route which it could use to eliminate independent water lines operating through the canal, and thus dominate and control the business by reason of monopoly of the water route. It should be noted, however, that when Congress enacted this law there was no single railroad company nor any system of railroad owning or operating rails reaching from the Atlantic coast to the Pacific coast, but that the only transcontinental all-rail routes existed only under through route arrangements over which joint rates were made applicable, and that, therefore, if it was not in the mind of Congress that the existence of joint through route arrangements constituted such an all-rail line as brought about a condition of potential competition between a railroad participating in such through route arrangements and a boat line which it intended to operate through the Panama Canal, this part of the act is so many meaningless words and is of no avail.

It appears that the Grand Trunk Milwaukee Car Ferry Company owns and operates two car-ferry boats, known as the *Grand Haven* and the *Milwaukee*, the former having a freight capacity of 28 cars and a licensed passenger capacity of 1,500, equipped with sleeping accommodations for about 100 passengers, while the latter has a freight capacity of 30 cars and a licensed passenger capacity of 3,000, equipped with sleeping accommodations for about 100 passengers. The distance across Lake Michigan which is traversed by these boats from Grand Haven to Milwaukee is about 85 miles, and this ferry line serves practically as a bridge by means of which the Detroit, Grand Haven & Milwaukee Railway may reach Milwaukee.

It appears that the idea of a car ferry between these two points was conceived and inaugurated as a private independent enterprise, but that under its former operation it was a failure and was taken over by the Grand Trunk interests and has been maintained without view to the cost of the service but rather to the character of the service possible through its maintenance. It appears that at times the Chi-

cago gateway on all-rail movements of traffic is greatly congested so that serious delays result, which delays are overcome by routing traffic over this car ferry. The car ferry is operated regularly, without regard to the amount of traffic offered per trip, and furnishes an all-season service.

It appears also that in addition to the Grand Trunk Milwaukee Car Ferry there is a car ferry operated by the Pere Marquette Railroad from Ludington to Milwaukee; also a car ferry operated by the Ann Arbor Railroad Company from Frankfort, Mich., to Menominee, Mich., and Kewaunee and Manitowoc, Wis.; also an independent break-bulk steamship line operated by the Goodrich Transportation Company on regular sailings from Grand Haven to Milwaukee via Chicago.

It appears further that rates via this car ferry are the same as rates applicable to the all-rail movement, and that there has been no lowering or increase of rates since the car ferry has come into the possession of the Grand Trunk in 1906.

It is contended that if the joint ownership and operation were discontinued the car-ferry company would necessarily go out of business because of expensive operation and resulting loss that would accrue to the company. It appears that the profit accruing to the car-ferry company, as shown by its statement for the half year ending December 31, 1913, was \$58,300.41, which was turned over to the Detroit, Grand Haven & Milwaukee Railway Company to discharge indebtedness to that company.

From a consideration of all the circumstances and conditions, the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration. The Grand Trunk Milwaukee Car Ferry Company will be expected to file its tariffs according to law, to become effective by July 1, 1915.

An order will be entered accordingly.

84 I. C. C.

No. 7034.
BLACKBURN-WARDEN COMPANY ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 3, 1914. Decided April 26, 1915.

Double first-class rating under southern classification on grapes in baskets in less than carloads found to be justified. Complaint dismissed.

T. R. Pope for complainants.

M. P. Callaway, R. Walton Moore, and W. R. Powe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are firms and corporations engaged in the wholesale fruit and produce business at Memphis, Tenn. By complaint, filed June 22, 1914, they allege that the double first-class rating prescribed by the southern classification and applied by defendants on interstate shipments of grapes in baskets in less than carloads is unjust and unreasonable. The establishment of a rating not in excess of first class is asked.

The southern classification rates grapes in less than carloads as follows: In baskets, with solid or slatted wooden tops, double first class; in boxes, barrels, or crates, first class. The carload rating for the packages named is third class. Prior to August 1, 1910, the classification provided that grapes should be inclosed in a wooden box, barrel, crate, or similar container, and rated grapes thus packed, in less than carloads, first class. Grapes packed in baskets only were not accepted for transportation. Effective August 1, 1910, grapes in baskets were included at the same rating. On June 17, 1912, the less-than-carload rating on grapes in baskets was increased to double first class, the rating since maintained.

The baskets in which grapes are shipped ordinarily are made of inferior wood and thin veneer. They are of a standard size and shape and hold 8 pounds of grapes. The tops are held on by two wire staples, one in the center of each end of the package, which are said to be easily broken or shaken loose. Shipments from producing territories to jobbing points ordinarily are made in refrigerator cars. The baskets absorb considerable moisture in transit, and when the cars are unloaded and the moisture dries out the thin tops of the baskets

become warped and expose the grapes to waste and damage in transit when reshipped in less than carload lots, although complainants state that they are large shippers of grapes in less than carloads and have never filed any claims for damages. The chairman of the Southern Classification Committee testified that in his opinion ordinary grape baskets were never intended to be shipping containers; that following the acceptance of grapes in baskets in less than carloads in 1910, the committee received numerous complaints of the inconvenience and cost of handling such shipments and of damage resulting in transit; that less-than-carload shipments are peculiarly liable to damage because the baskets are easily broken by contact with other freight; and that a thorough investigation satisfied the committee that an error had been made in giving a first-class rating to grapes in such frail containers. As a result, the double first-class rating was adopted. Defendants insist further that because of their frailty the baskets used can not safely be stacked on trucks, and that the carriers are forced to load and unload them exclusively by hand, and that they can not be stored safely with other freight, but must be placed in a separate part of the car to avoid loss and damage. This manner of handling, defendants assert, greatly interferes with the economical loading and unloading of cars. One witness for defendants stated that his information was that from 6 to 12 baskets could be crated properly at a cost of from 20 to 25 cents.

Complainants rely principally upon the official and western classification less-than-carload ratings on grapes in baskets, first class. Ratings in one classification territory, however, are not conclusive of the reasonableness or unreasonableness of the ratings in another. The present rating has been in effect since June, 1912. There is no evidence that grapes in baskets are rated higher in southern classification than other articles similar in value, weight, and other essential transportation qualities, when such articles are shipped in like quantities.

Upon all of the facts of record, we find that defendants have justified the present rating, and an order will be entered dismissing the complaint.

34 I. C. C.

No. 7029.
**NATIONAL COUNCIL OF FARMERS' COOPERATIVE
ASSOCIATIONS**
v.
**CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.**

Submitted January 1, 1915. Decided May 11, 1915.

Upon complaint of shippers of grain owning elevators at country stations in the states of Illinois, Iowa, Minnesota, Nebraska, Kansas, North Dakota, and South Dakota, alleging that defendants fail to furnish cars in suitable condition for the transportation of grain in bulk, and asking that they be required either to furnish cars suitable in all respects for carrying this traffic or make an allowance to shippers for work done and materials furnished to prepare the cars for loading; *Held:*

1. It is the duty of carriers to furnish cars suitable to transport in safety traffic which they hold themselves out to carry, and this duty is not fulfilled when a carrier furnishes a car, upon reasonable request of a shipper, which requires repairing to prevent leakage of grain in transit.
2. It is not unreasonable to expect shippers to do a limited amount of cleaning or to make minor and inexpensive repairs on such cars.
3. It would be impracticable to fix by order any allowance that should be paid shippers for labor performed or materials furnished.
4. Suggestions made that carriers specify in their tariffs what they will furnish in the way of materials, which must be uniform and adequate.
5. Carriers' practice at terminal points with reference to preparing cars for loading grain in bulk not found to be unjustly discriminatory against complainant's members. Complaint dismissed.

Stevens & Herndon and *H. W. Danforth* for complainant.

E. J. White, H. G. Herbel, and F. G. Wright for Missouri Pacific Railway Company.

A. P. Humburg and *J. M. O'Day* for Illinois Central Railroad Company.

J. N. Davis and *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

J. B. Payne and *W. L. Derr* for Chicago Great Western Railroad Company.

H. A. Scandrett, J. P. Carey, and A. W. Artell for Union Pacific Railroad Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is an organization composed of the Associations of Farmers' Elevator Companies of Illinois, Iowa, Minnesota, Nebraska, Kansas, and North and South Dakota, representing approximately 2,000 elevator and grain companies operating a like number of grain elevators at country stations on the lines of the defendants in these states. By petition filed October 26, 1914, complainant seeks an order requiring defendants to furnish cars for shipments of grain in bulk that are clean and in good repair and properly equipped with grain doors, or provide for an allowance to shippers for labor done or materials furnished in preparing cars for such loading. Reparation is asked.

The issues in this case are: First. Is it defendants' duty to clean, repair, install grain doors, and otherwise prepare cars for the transportation of grain in bulk from these stations or make an allowance to shippers for such service? Second. Do defendants unjustly discriminate against complainant by performing such service for shippers of grain in bulk at terminal points? Third. Does the present practice subject the grain traffic from country stations to unjust discrimination?

Wheat, oats, corn, and other grains are shipped from the elevators in carloads in bulk. Such shipments require reasonably clean, water-tight box cars in good repair. The car should be free from holes or cracks through which the grain may sift while in transit. Ordinary box-car doors are not constructed so as to prevent leakage of grain, and therefore it is necessary to place in the cars what are called grain doors. Originally cars designed for shipment of grain were equipped with stationary or swinging grain doors, which, however, were not found to be practicable. Because of inability to secure a satisfactory permanent grain door the practice of defendants for more than a quarter of a century has been to furnish grain shippers at country stations with "sectional doors" or boards, which may be nailed to the car door posts. The "grain doors," so called, are made in sections, usually 18 to 24 inches wide. The boards composing them are cleated together and are long enough to span the doorway of the car. The door sections or boards are furnished and delivered to country elevators by the defendants. They are usually piled at some convenient place near the elevators. From six to eight sectional doors are required for a car.

There is no uniformity with respect to the amount or the character of the material furnished by different carriers. Some of them furnish sectional doors, boards, lath, and burlap or paper specially designed for the purpose; others furnish sectional doors, lumber,

and paper; and others furnish nothing but sectional doors and lumber.

At many stations at which farmers' elevators are located there are also what are called "line" elevators, usually owned by grain dealers at terminal points. It is not asserted, nor is it shown, that there is any discrimination in the furnishing of grain doors or materials as between the "line" elevators and farmers' elevators at country stations.

The heaviest movement of grain is in January, February, May, June, and September of each year. There is also usually a considerable movement in August. About 80 per cent of the grain is shipped in what are called rush periods. The movement is of great magnitude, and the prompt and safe transportation of the grain to the markets is of paramount importance to both carriers and shippers. The volume of grain shipments and the necessity for prompt delivery at the markets in a comparatively short season of the year present a difficult problem to carriers with respect to furnishing adequate equipment. At Chicago alone more than 200,000 carloads of grain are unloaded into elevators annually. The Chicago & North Western transported 100,000 carloads of grain during the year 1913 and the Missouri Pacific 42,000 carloads. During that year the North Western expended \$119,694.36 for grain doors supplied to shippers on its lines.

In anticipation of the grain movement each year defendants inspect and repair their grain-car equipment, after which the cars are carded as fit for grain and sent to the grain-producing territory.

The owners and operators of the country elevators are often also engaged in the sale of coal, lime, cement, or lumber. Box cars which come to them loaded with other commodities are frequently loaded by them with grain. Whenever possible defendants send box cars from terminal points loaded, so as to avoid empty car movements. Although in perfect condition when they leave the terminal or repair point, perhaps under load, cars may become unfit in some respect because of the strain put upon them in transit or of misuse by a shipper. The record does not show what percentage of the cars furnished country elevators are sent empty from terminal or other points, and have not been loaded with commodities other than grain after inspection and repairing at terminal or repair points.

Local agents of defendants know when cars are ordered whether or not they are to be used for shipments of grain, and they are instructed not to permit cars to be loaded with grain that are unfit to transport it safely. In seasons of car shortage, or in rush shipping seasons, the shipper accepts any car furnished and repairs it if necessary, in preference to waiting until another car can be provided.

The average time in which a car can be furnished in lieu of one refused is about 48 hours.

Practically all cars furnished to these country elevators must be cleaned by the shipper. A large percentage of them require more or less patching, or coöpering, to render them fit to carry grain without leakage. It is impossible to determine from the record the exact percentage of cars furnished which the shippers must materially repair before loading. So far as the evidence shows, some patching and repairing work by the shipper, besides placing the grain doors and coöpering around them, is required on about 50 per cent of the cars furnished. This work may consist of covering one or more holes or cracks in the floor, or it may, and often does, include repairs to door posts, ends, linings, roof, and sides of car. The cars furnished by some carriers are in much better condition than those tendered by other carriers. As great a difference is also noted with respect to the condition of cars furnished at different times by the same carrier.

During the year 1908 and continuing until July, 1911, defendants' rules provided that when cars furnished for grain, grain products, or other bulk freight required repairing to insure against leakage in transit, and the material necessary for the repairing was furnished by the shipper, payment for the actual cost of the same, including cost of necessary labor, but not exceeding 80 cents per car, would be made by the carrier furnishing the car. It developed that it was impossible for the carriers to keep any check of the material used or alleged to have been used, or of the labor so performed. Known abuses of the rule existed, and discriminations inevitably resulted.

For a number of years an allowance of \$2 per car for grain doors furnished was paid to terminal elevator companies. This was found to result in the carriers paying for grain doors that had been made out of material furnished by the carriers. Claims were presented for furnishing grain doors for outbound cars when the doors or the materials used therefor were taken from inbound cars. This allowance and the allowance of 80 cents per car to the country elevators were discontinued at the same time. Competition between carriers at the terminal points led to the payment of the allowance, and now in part forces the coöpering, repairing, and installation of grain doors at such points, which situation will be referred to later.

At many points shippers prefer to install grain doors and coöper cars, because they are best fitted to do so and because it is convenient to do the work while the cars are being loaded.

Unusual efforts have been made by the defendants in recent years to furnish cars reasonably well equipped for transportation of grain. Each of them expends large sums for inspection and repairs. The

Missouri Pacific has established coopering or repair shops at Wichita, Conway Springs, Downs, Atchison, Harrington, and Ossawatimie, Kans., and at Omaha and Falls City, Nebr. At each of these points, as well as at Kansas City and St. Louis, Mo., box cars are fitted for shipments of grain. Early in 1914 this carrier sent men to points on its line where empty box cars were stored to inspect and repair them, if repairs were necessary. The Chicago, Burlington & Quincy has 13 repair points in the grain-shipping territories. The Chicago & North Western and the Illinois Central cooper and repair cars for shipments of grain at terminal points. Whether or not the other defendants have repair stations at points other than their terminals does not appear.

It is the duty of carriers to furnish cars suitable to transport in safety traffic which they hold themselves out to carry. This duty is not fulfilled when a carrier furnishes a car, upon reasonable request of a shipper, which requires repairing to prevent leakage of grain in transit. *Southwestern Missouri Millers Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 245, 250. In case special preparation is required to make a car fit for the shipment of a particular commodity the task of special preparation usually devolves upon the shipper. This for the reason that if the carrier has provided a car suitable for the shipment, and dunnage or other protection is required because of the nature of the freight, the duty of providing that protection ordinarily rests upon the shipper. In the case of carload freight, where the loading is done by the shipper and the car is put in his possession for that purpose, he can ordinarily perform the work more economically and to better advantage than can the carrier. The repair work done upon cars by shippers, such as closing a hole with boards or coopering the car with burlap or paper, is not permanent. The work must ordinarily be done at the station from which the shipment is made. In the very nature of things the shipper who loads the car can prepare it for loading to better advantage than can anyone else. It is therefore not unreasonable to expect the shipper to sweep a car or do a reasonable amount of cleaning, or to make some minor and inexpensive repairs to prepare the car for loading and prevent leakage of grain in transit. It is impracticable for the carriers to have competent workmen at all stations to do this work, and minor cleaning, patching, and coopering can readily be done by men in the employ of the elevator companies, who know exactly what is to be done and how best to do it.

If the car furnished requires much repairing, if its door posts are shattered or broken, or if it has many holes or cracks through which grain would sift in transit, the shipper should refuse to accept it. The obligation of the carrier is to promptly furnish a suitable

car. The shipper is not bound to receive and load a car upon which he must expend labor and materials to make it suitable to transport grain. The defendants do not desire that a shipper should load a car which is not in condition. Obviously the defendants do not wish to unnecessarily increase their expenditures for grain lost in transit. If, however, each carrier engaged extensively in carrying grain would provide repair and cooperage stations at convenient points in the grain-growing and grain-shipping regions, cars properly repaired could be furnished shippers on short notice and the carrier's duty would be more fully discharged.

Ever since grain has been shipped in bulk shippers have been required to place the grain doors. We are of the opinion that such a requirement is not unreasonable. It is an incident of loading and should properly be performed by the shipper.

The marked difference in the character of cars furnished by separate carriers at different points and by one carrier at the same point renders it impracticable to fix a maximum allowance which should be paid to shippers for material furnished and labor performed. *Balfour, Guthrie & Co. v. O.-W. R. R. & N. Co.*, 21 I. C. C., 539. Experience has demonstrated that it is impossible to accurately check claims for material furnished and labor performed by shippers. We conclude that we may not with propriety fix by order a maximum amount that should be paid the shipper by a carrier for labor performed and for materials furnished by him in installing grain doors or doing other incidental repair work on cars furnished for shipments of grain in bulk. If, however, a carrier makes any allowance to shippers at country stations for work done or materials furnished, the conditions and purposes as well as the maximum allowance must be stated in its tariff and must be applied without discrimination.

The amount and character of the material furnished shippers for grain doors and for incidental coopering and repairing should be uniform and adequate for the purpose; just what will be furnished should be clearly stated in tariffs. It is manifest that if a carrier furnishes nothing but loose boards at one point and at another point furnishes sectional doors, lath, paper, or burlap, unlawful discrimination results.

There does not appear to be unjust discrimination against shippers of grain at country elevators because cars suitable to ship other commodities are furnished other shippers. The circumstances and conditions are so different that no discrimination forbidden by the act results.

At terminal points such as Chicago, Omaha, and Kansas City, since 1911, defendants prepare the cars for loading with grain by placing

grain doors and doing any necessary repair or coopering work. At such points they maintain what is called "the grain door bureau," which reclaims grain doors which come with inbound shipments. This bureau also cleans, repairs, and coopers cars and installs grain doors for outbound shipments of grain from terminal elevators. It keeps an account, crediting the carrier which brought the doors inbound and debiting the carrier which takes them outbound. This account is the basis of settlements between the carriers.

The evidence is that at terminal points repairing of cars and installation of grain doors can be done efficiently and at a minimum cost. The work done by this bureau conserves the material of the carriers. It does not appear that country elevators are discriminated against because the carriers prepare cars for the transportation of grain from terminal points. The country elevator owners who testified were all of the opinion that they would be in no way benefited if coopering cars and installing grain doors were discontinued at terminal points. The grain from the terminal point is not sold in competition with that of the country elevator. All of it comes inbound to the terminal from country or line elevators, subject to the same initial cost of fitting the cars for carrying grain.

We find that coopering and fitting cars to transport grain from elevators at terminal points is not unjustly discriminatory against, or unduly prejudicial to, shippers from country elevators.

The defendants will be expected to adopt the suggestions herein made with respect to uniformity and adequacy of materials to be furnished by them to country elevators for grain doors and incidental repairs, and to state in their tariffs what will be furnished by them for the purposes stated. When this is done we are of opinion that the complaints of grain shippers from country elevators will be measurably satisfied.

The findings herein constitute no basis for an award of reparation. The complaint will be dismissed.

34 I. C. C.

No. 7002.
KANSAS CITY MISSOURI RIVER NAVIGATION COM-
PANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted January 4, 1915. Decided May 11, 1915.

Complainant, a water line operating on the Missouri and Mississippi rivers between Kansas City, Mo.-Kans., and East St. Louis, Ill., seeks the establishment of through routes and joint rates with defendants on grain and grain products from Kansas City to Norfolk and Newport News, Va., for export, and also asks that defendants be required to exchange bills of lading with it at Kansas City on traffic destined to points east of the Illinois-Indiana state line; *Held*:

1. The imputation of doubtful financial responsibility on part of complainant does not justify defendants in refusing to establish through routes and joint rates with it, since, under the law, they may have recourse to the Commission for an order protecting them in this respect if necessary.
2. The question of the establishment of joint rates between complainant and defendants is a matter of public concern and is not limited to the interests of the contending parties.
3. A navigable river is a public highway and natural avenue of commerce which the public interests demand should be utilized to the fullest extent. *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281, 288. Defendants' refusal to join in through routes and joint rates is not responsive to the requirements of section 1 of the act and is unduly prejudicial to complainant under section 3.
4. If the practice of exchanging bills of lading be indulged in as to other carriers, it is unjustly discriminatory against complainant to refuse like recognition to its bills of lading.
5. No opinion expressed upon the measure of reasonable maximum rates, but through routes and joint rates should be established. Record held open for such further proceedings as may be necessary.

New & Krauthoff and *M. H. Winger* for complainant.

C. B. Sudborough and *John G. Williams* for Vandalia Railroad Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

L. J. Hackney for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Robert A. Campbell and *R. L. McKellar* for Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant, hereinafter called the navigation company, is a corporation operating a line of steamers, towboats, and barges on the Missouri and Mississippi rivers between Kansas City, Mo.-Kans., and St. Louis, Mo., and East St. Louis, Ill. It brings this proceeding to secure an order requiring defendants to join with it in the establishment of through routes and the publication of joint rates applicable thereto on grain and grain products from Kansas City to Norfolk and Newport News, Va., when for export, and to exchange bills of lading with it at Kansas City on traffic originated by complainant destined to points east of the Illinois-Indiana state line in conformity to practices which they now observe in their relations with rail carriers west of the Mississippi River. The complaint avers that defendants, in violation of sections 1 and 3 of the act, have hitherto refused to enter into such arrangements with it, thereby depriving shippers of the unrestricted use of an active and efficient competitor of all-rail lines from Kansas City and denying the navigation company equal facilities for the interchange of traffic.

The defendants are some of the principal trunk lines operating from East St. Louis to central freight association and trunk line territories and, in addition, the Louisville, Henderson & St. Louis, Louisville & Nashville, Chesapeake & Ohio, and Norfolk & Western railways, forming through routes from East St. Louis to Norfolk and Newport News, hereinafter referred to as the Virginia ports.

The navigation company began operations in 1911, starting with one boat, since which time it has materially increased its equipment and now has one steam packet and passenger steamer, one motor boat, two towboats, and eight steel-hull cargo barges. The amount of capital stock issued is \$1,202,000, of which \$2,000 is common, divided among the directors, and \$1,200,000 preferred, divided among more than 4,000 shareholders who are citizens of Kansas City, Mo.-Kans. Of the preferred stock, all of which appears to have been subscribed, there remained as of July 1, 1914, \$208,016.24 in unpaid subscriptions, the paid-in subscriptions amounting to \$991,983.76. A statement of complainant's assets and liabilities as of the same date shows, among other things, an investment in "floating equipment" of \$427,291.44; terminals at East St. Louis, \$31,012.45; and a cash fund of \$380,117.70.

The navigation company has a modern ironclad terminal warehouse at East St. Louis fully equipped with improved and economical freight-handling devices, platforms, and other facilities. At Gasconade, Mo., it owns a machine shop and shipyard, with 30 acres of ground. At Kansas City it also has on leased ground an

office and a machine shop fully equipped for the repair of vessels. The terminal at Kansas City consists of a modern warehouse owned by the municipality and leased to the navigation company upon a tonnage basis.

The terminal at Kansas City is reached by the tracks of the Missouri Pacific Railway, which performs necessary switching to and from all other rail carriers at that point, the navigation company absorbing the switching charges. The terminal at East St. Louis is not directly connected with the tracks of any of the defendants, but is connected with the tracks of the East St. Louis Connecting Railway, hereinafter called the connecting railway, which is allied with and is a part of the Terminal Railroad Association lines. The connecting railway performs the switching to and from the rails of the defendants. Being the navigation company's only rail connection at East St. Louis, and the carrier upon which it must depend for movement of cars between it and defendants' lines, the connecting railway would seem to be a necessary party to this case, but it was not made a party, and we are not advised either as to its interest in or attitude toward this proceeding.

The navigation company engages in the transportation of all classes of freight between Kansas City and East St. Louis and intermediate points. It has filed one tariff with this Commission naming rates on grain and grain products from Kansas City to St. Louis and East St. Louis in order, as stated upon the hearing, to be enabled to issue through bills of lading and participate in the interstate transportation of such commodities. It has no tariff applicable to other commodities on file with this Commission, and its witness stated at the hearing that it did not purpose or desire to subject the transportation of other commodities to federal control, this notwithstanding that it appears from the record that there is a volume of westbound traffic amounting to one or more cars per day delivered by defendants to the navigation company at East St. Louis, for the transfer of which defendants operate, or at the time of hearing did operate, a trap-car service. It seems proper to here remark that, as the transportation of property from East St. Louis or from St. Louis via East St. Louis to Kansas City, Mo., or Kansas City, Kans., is interstate transportation, this arrangement would appear clearly to be one for through carriage between a railroad and a water carrier, which subjects them to the jurisdiction of the act as provided in section 1 thereof. This witness testified that 95 per cent of the entire traffic of the navigation company from Kansas City to St. Louis and East St. Louis consists of grain and grain products, but the record is silent as to the volume of tonnage of any class of traffic handled by it.

There are many flouring mills in Kansas City and vicinity which complainant's witness estimates have an aggregate capacity of 12,000 barrels daily. Much of the product goes to points east of the Illinois-Indiana state line, and witness testified that he had received many inquiries for rates, both for shipment to points for domestic consumption and to the Virginia ports for export. It is a matter of common knowledge that there is a heavy tonnage of grain and grain products moving from Kansas City to and through St. Louis and East St. Louis. Complainant's witness directs attention to work which the federal government has performed and is now doing on a large scale to improve the navigability of the Missouri River; to its own enterprise and endeavors to utilize such improvements by developing traffic on the river between these points; and to the benefits that it contends would inure to Kansas City and its shippers if complainant's prayer should be granted. The navigation company naturally desires to participate in this traffic. Rates and divisions thereof are stated herein in cents per 100 pounds.

As a general rule, no joint rates are published from Missouri River points to points east of the Illinois-Indiana state line, through rates being made on combination over East St. Louis. Complainant does not indicate specific points of destination it desires to reach, and does not pray for joint through rates into this territory. Throughout the season of navigation on the great lakes, defendants have for some years been accustomed to join rail carriers west of the Mississippi River in through proportional rates from Missouri River points to the Virginia ports on grain and grain products when for export. These rates were 22 cents on wheat and flour, of which the carriers up to the Mississippi River received 9 cents, the defendants accepting 13 cents as their division from East St. Louis to the ports. The rate on corn and articles taking the same rate was 21 cents, divided 8 cents west and 13 cents east of the river. These rates are asserted by defendants to be extremely low, and are said to have been compelled by competition with available rates over the lines of rail-lake-and-rail carriers to Baltimore, Md. These all-rail rates from the Missouri River to the Virginia ports are withdrawn each year at the close of navigation on the lakes.

The navigation company has established local rates on a basis of 80 per cent of the all-rail rates from Kansas City to St. Louis and East St. Louis, its rates being 7.2 cents on wheat and flour and 6.4 cents on corn and articles taking the same rate. The record indicates, although not definitely, that the navigation company does not handle grain in bulk. Most of the testimony relates to flour, and our findings will be made with reference only to grain products. The proportional rates from East St. Louis to the Virginia ports

are 15.2 cents on grain, 15.8 cents on grain products other than flour, and 15.8 cents on flour. In combination with the navigation company's local rates the through rates via its line and those of defendants from Kansas City to the Virginia ports would be 23 cents on flour and 22.2 cents on corn meal and other products taking same rates, as compared with the before-mentioned all-rail joint through proportional rates of 22 cents and 21 cents, respectively.

The navigation company has not restricted its request in this proceeding to the establishment of through routes and rates. It goes further and indicates the joint rates which it desires to have established to the Virginia ports and the divisions thereof it would be willing to accept. That is to say, it urges that joint rates should be established on the basis of its local rates from Kansas City to St. Louis, plus the 13-cent division which defendants accept out of the aforementioned all-rail rates to the Virginia ports. In asking this the navigation company contends that it asks defendants to do for it only what they now do for the all-rail carriers from Kansas City to East St. Louis. The admitted effect of such an arrangement would be to establish through rates via the lines of the navigation company and the defendants from Kansas City to the Virginia ports of 20.2 cents on flour and 19.4 cents on corn meal and articles taking the same rate. Thus, complainant urges, the Kansas City shippers would benefit to the extent of 1.8 cents on flour and 1.6 cents on corn meal and articles taking the same rate.

The navigation company asserts that it is prepared to deliver traffic to defendants at East St. Louis under circumstances and conditions similar to those attending the delivery of through traffic to them by the all-rail carriers from Kansas City; that it will absorb the switching charges on traffic delivered to defendants under joint rates; and that, to the Virginia ports at least, the defendants will receive the same divisions out of the proposed through rates that they now receive out of the all-rail rates before mentioned. On domestic traffic, under an arrangement for through routes at the combination of rates to and from East St. Louis, the defendants would absorb the switching charges on traffic delivered to them and would get their local or proportional rates from the river to the eastern points of destination.

Complainant introduced no evidence whatever tending to show what a reasonable rate would be on export traffic to the Virginia ports. Defendants introduced some evidence of an analytical nature for the purpose of showing that the 13-cent division of the through all-rail rate is unremunerative, but this evidence need not be considered at the present time, since, for reasons to be stated later, we can on this record make no order establishing a specific rate, and in

no event can we prescribe the divisions of a joint rate until it has been fixed in amount and the carriers have failed to agree upon the divisions thereof.

Defendants show that in operating through routes with complainant they would have the duty of furnishing equipment to the navigation company which would involve from two to four switching movements on cars sent from their break-up yards to the navigation company's terminal for loading and return to their classification yards, whereas on traffic received from the all-rail lines the latter furnish the equipment and the only switching necessary is from the interchange point to defendants' classification yards. In addition to the expense of furnishing equipment there would be per diem expenses of 45 cents per day on foreign cars, which the connecting railway would be entitled under the per diem rules to reclaim from defendants. Estimating the detention at four or five days, defendants place the per diem expense at \$1.80, or \$2.25 per car. It is to be noted that this is only an estimate or guess as to the extent of the detention.

When shippers at Kansas City and vicinity deliver grain or grain products to any one of the carriers operating therefrom, such carrier issues its own bill of lading showing the routes and rates to the ultimate domestic destinations or ports of export. It appears that there is a practice among shippers at Kansas City of taking the western line's bills of lading to the Kansas City representative of the eastern or delivering line, who takes up the western line's bill of lading and issues in exchange therefor the eastern line's bill of lading. The navigation company asks that defendants be required in the future to so honor its bills of lading, which in the past they have refused to do on the ground that they were disinclined to assume responsibilities which should rest upon it as the initial carrier. Complainant asserts that defendants' refusal to so exchange its bills of lading is unjustly discriminatory and subjects it to disadvantage in getting shippers to route traffic via its line.

This practice or custom of exchanging bills of lading is said to have developed from the preference or demand of the eastern consignees, who usually accept a sight draft with bill of lading attached and prefer to have a bill of lading of their home or delivering road. It thus appears that the eastern line issues a bill of lading for property which has not at the time been delivered to it and which, possibly, might never come into its possession. What happens in the event of wreck or diversion is not disclosed by the record. A witness for defendants stated that he considered it highly improper to have in the hands of a consignee an all-rail bill of lading representing a movement initiated by a water carrier. Counsel for the same lines disavows the practice as between the rail lines and states on brief that

it is improper and misleading, and instead of being extended to bills of lading issued by the navigation company should be prohibited absolutely. The record is not clear in respect of the details or the extent of the practice referred to, and we are not to be understood as approving it. If, however, the practice be indulged in as to other carriers, we think it is unjustly discriminatory against complainant to refuse like recognition to its bills of lading.

If the navigation company interchanges traffic under any arrangement for through interstate carriage with rail lines at East St. Louis or at Kansas City that is not covered by tariffs on file with this Commission, such action is unlawful.

With respect to the implied doubt on defendants' part of the financial responsibility of the navigation company, it seems proper to observe that the latter is a going concern and apparently capable of assuming the responsibilities which would be imposed upon it as a participating carrier in through routes and rates. But even if that should not be so, it does not of itself justify a refusal to establish through routes and joint rates, since the Congress apparently had in mind the possibility of such a situation when by the Panama Canal act it empowered this Commission to establish through routes and joint rates between rail and water carriers, and provided, among other things, that orders of the Commission—

May be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

The question of the propriety of through routes presented by this case is not limited to the interests of the contending parties. It is a matter of public interest.

A natural waterway, improved by the expenditure of public funds, should be thrown open, as far as possible, to the free and unrestricted use of all those who desire to avail themselves of it. * * * A navigable river is a public highway, a natural avenue of commerce, and the public interests demand that its advantages be utilized to the fullest extent.

It is true that the act to regulate commerce, in giving to this Commission authority to establish through routes and joint rates, was not intended to require us to establish such through routes and joint rates whenever requested to do so, without regard to the peculiar circumstances of each case. In view of the fact that the act was designed to promote the free movement of interstate commerce, and bearing in mind that a large river is a natural artery of commerce, it would seem that any responsible common carrier operating on the river in question would be *prima facie* warranted in requesting this Commission to allow that carrier to participate to the fullest possible extent in the interstate traffic originating on that river. *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281, 288.

We are of opinion, and find, that defendants' refusal to join with the navigation company in through routes and joint rates on grain

products to the Virginia ports for export is not consonant with the requirements of section 1 of the act and that it is unduly prejudicial against complainant under section 3. We are further of the opinion, and find, that defendants should join with the complainant in the establishment of through routes and joint rates on grain products from Kansas City, Mo., and Kansas City, Kans., to Norfolk and Newport News, Va., when for export.

The evidence before us does not justify a finding as to the measure of reasonable maximum joint rates to the Virginia ports, and even if it did we could issue no order, since the connecting railway would be a necessary party to such rates. We find upon reference to the tariffs that the all-rail lines from Kansas City have now re-established the former rates of 22 cents on flour and other products taking the same rate, and 21 cents on corn meal and other products taking the same rate from Missouri River points to the Virginia ports for export. Joint rates between the navigation company and defendants' lines should not be greater than the all-rail rates. We are not advised whether the divisions are the same under these reissued rates that they were in former years, and we are not prepared to say that defendants should be required to accept the former all-rail division of 13 cents out of joint rates with the navigation company. If there be dissimilarity of circumstances and conditions attending the interchange of traffic with the navigation company compared with interchanges with the all-rail lines, defendants are entitled to be compensated for the greater expense, either by a larger division of the through rate or by reasonable additional charge. *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C., 384, 393.

We shall expect the parties to the record to comply with the findings and suggestions herein and, if possible to do so, without further recourse to the Commission. Pending that action the record be held open. If the parties do not establish the through rate to the Virginia ports for export and joint rates applicable within 60 days from the date of service of this report, the Commission will entertain a motion by complainant to amend its petition by making the connecting railway a party defendant, and the parties shall take such further steps as may be necessary to give effect to these findings.

No. 7059.
OHIO IRON & METAL COMPANY
v.
ELGIN, JOLIET & EASTERN RAILWAY COMPANY.

Submitted November 1, 1914. Decided April 26, 1915.

Defendant mailed notice of arrival of a car of scrap iron at Chicago Heights, Ill., which was never received by the consignee; *Held*, That the carrier's duty was performed when it placed notice in the mail and that demurrage charges were properly assessed. Refund of \$1 overcharge directed.

S. J. Posen for complainant.

H. I. Allen for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling scrap iron and steel, with principal place of business at Chicago, Ill. By complaint, filed June 29, 1914, it alleges that \$48 demurrage charges were exacted unlawfully on a carload of scrap iron shipped from Duluth, Minn., to Chicago Heights, Ill., on November 1, 1912. Reparation is asked. The matter was presented informally October 17, 1913.

The shipment reached Chicago Heights November 14 or 15, 1912. Complainant's witness testified that the first notice received of the arrival was a telephone communication from defendant January 16, 1913; that immediately upon receipt thereof arrangements were made for the disposition of the car; and that the demurrage complained of was assessed at the rate of \$1 per day in the interim.

Shipments of scrap iron purchased by complainant are consigned to complainant at a designated point. Upon their arrival, complainant gives orders for delivery to its customers at the same points or for reconsignment. Complainant's witness testified that it was the practice of the carrier to give immediate notice of the arrival of shipments, following with written request for disposition orders in case such orders were not given promptly after the initial notice, and that complainant was prepared to dispose of the carload involved immediately upon arrival. As previously stated, complainant denies categorically that any notice whatever was received in connection with the car involved until January 16, 1913. Defendant's

witness, whose duty it was to advise consignees of the arrival of cars at the time this shipment was received, testified that in accordance with the general custom he had sent complainant formal notice of the arrival of the car upon the day of its arrival. He was unable to produce a copy of the notice, but offered in evidence a carbon copy of a letter addressed to complainant, dated November 18, 1912, advising complainant that the car had been received. He testified that he had written this letter; that he had not mailed it himself, but that it had taken the regular course of other correspondence out of the office, and that in the regular course of business it would have been placed in the mail on the day it was written. He also testified that he had at various times after the dispatch of the letter communicated with complainant's office by telephone relative to the matter.

Defendant's demurrage tariff provides that—

Consignee shall be notified by this railway agent in writing, or as otherwise agreed to by this railway and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and if transferred in transit, the initials and number of the original car. In case car is not placed on public-delivery track within 24 hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

Also:

On cars held for orders time will be computed from the first 7 a. m. after the day on which notice of arrival is sent to consignee.

Upon all of the facts of record we find that on November 18, 1912, defendant placed in the mail a letter properly addressed to complainant advising complainant of the arrival of the car involved; that the mailing of this letter fully discharged defendant's duty under its tariff, and that the demurrage charges of \$1 per day were properly imposed from November 20, 1912, to January 16, 1913, both inclusive, Sundays and holidays excepted. On this basis the demurrage would have amounted to \$47. It appears, therefore, that there was an overcharge of \$1 on the shipment, which must be refunded. An order will be entered accordingly.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF OIL STEAMERS.

No. 7060.

APPLICATION OF SOUTHERN PACIFIC COMPANY AND ASSOCIATED OIL COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH THE OWNERSHIP OF CERTAIN OIL STEAMERS.

Submitted September 25, 1914. Decided May 7, 1915.

Upon application of the Southern Pacific Company and Associated Oil Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which petitioner may retain ownership in oil steamers operated between certain California ports and points in Oregon, Washington, Alaska, and the Hawaiian Islands; Held:

- 1. That a rail carrier does not necessarily have to reach a point in order to compete with water carriers that operate directly to that point, but that such competition may exist by the rail carrier's participation in joint rates.**
- 2. That the Southern Pacific Company does or may compete with its oil steamers between California ports and points in the states of Oregon and Washington, and such continued ownership and operation beyond July 1, 1914, is denied, effective July 15, 1915.**
- 3. That, unless the Southern Pacific Company participates, by its rail lines, or in connection with other lines, in transportation of oil from California points to a port for transshipment to Alaska, the continued ownership and operation of its oil steamers between the California ports and ports of Alaska, transporting only oil destined to Alaska, is not, and will not be, in violation of the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act.**
- 4. That the Southern Pacific Company does not compete with its oil steamers in their operation to the Hawaiian Islands, and as to that service the continued ownership and operation of these boats will not be in violation of the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act.**
- 5. That if petitioners own any common carrier pipe line which does or may compete with the operations of its boat line, such ownership and operation is within the provisions of the Panama Canal act.**
- 6. That nothing said herein is to be construed as a finding that the Southern Pacific Company's ownership in and transportation of its oil is not within the prohibition of the commodities clause of the act.**

F. H. Wood and H. C. Booth for Southern Pacific Company.

Edmund Tauszky for Associated Oil Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This is an application under section 5 of the act to regulate commerce as amended by the Panama Canal act, filed June 29, 1914, by the Associated Oil Company and the Southern Pacific Company, in which authority is sought to operate, beyond July 1, 1914, a fleet of oil steamers.

The Southern Pacific Company, hereinafter referred to as petitioner, owns and operates a system of railways, and among them a line between points in the states of Oregon and California. Petitioner, through ownership and otherwise, controls the majority of the stock of the Associated Oil Company, hereinafter referred to as the oil company, a California corporation having capital stock of \$40,000,000, and engaged in the business of producing and marketing petroleum and its products. The oil company owns and leases large tracts of oil-producing land in the state of California and owns a fleet of seven vessels which are used to transport its oil. These vessels are especially equipped for carrying oil in bulk, and have an aggregate capacity of 274,000 barrels. At Monterey, Gaviota, and Port Costa, Cal., hereinafter referred to as the loading ports, the oil company has large storage plants to which oil is conveyed by pipe lines which are indirectly owned by petitioner, and from which the boats receive interstate shipments. The steamers ply from the loading ports principally to San Francisco, Cal., Linnton, Oreg., Everett and Seattle, Wash., Honolulu, Hawaii, and ports of Alaska.

Neither passengers nor freight other than oil are carried by petitioner's steamers. No tariffs of the steamers' charges have been filed, and they have never been held out to be common carriers. For two years prior to July 1, 1914, the steamers did not carry any interstate shipment for any shipper other than the oil company, and the only two intrastate shipments carried for other shippers in that period consisted of 100,000 barrels of oil, the transportation of which was arranged for by special agreement. During the same period the oil company shipped by its steamers more than 8,000,000 barrels of oil from California to Oregon and Washington points.

This floating equipment is alleged to be necessary and constantly in use for the transportation of the oil company's products. It is urged that these steamers are not common carriers, and that, therefore, their operations do not come within the prohibitions of the Panama Canal act. Petitioner desires permission, however, to carry oil for others when its business will permit, but not as a common carrier. It contends that such a service for shippers would be in the interest of the public and of advantage to the convenience and commerce of the people.

In *S. P. Co. Ownership of Schooner Pasadena*, 33 I. C. C., 476, referring to the first section of the Panama Canal act, we said:

It will be noted that while the first part of this paragraph, in describing the carriers by water, refers to "common carrier by water," it later prohibits such ownership or interest in "any vessel carrying freight or passengers." The service performed by the *Pasadena* comes within one or the other of these provisions, and we do not deem it necessary to decide whether or not it is a common carrier in order to properly pass upon this application.

The application now considered can also be properly disposed of without deciding whether or not these steamers are common carriers.

The issues presented for determination are: Does or may petitioner compete with these steamers, and if so, will the continued ownership and operation of them by petitioner, through ownership in the oil company, be in the interest of the public and of advantage to the convenience and commerce of the people, and neither exclude, prevent, nor reduce competition on the route by water?

The loading ports are all reached by petitioner's rail lines. Monterey and Gaviota are on the coast of California south of San Francisco; Port Costa is about 32 miles northeast of San Francisco, on Southampton Bay. Petitioner can transport oil via its rail line from these loading ports to Portland, Oreg., and, with its connections, can participate in such transportation to Seattle, Everett, and other points in that general territory. It does not clearly appear whether or not petitioner's rail line is at present engaged in the transportation of oil from these loading ports to the destinations just named. Through and by its tariffs on file with the Commission, however, it holds itself out as a carrier of oil between certain of these points, and therefore it must carry whatever oil is tendered to it for transportation thereunder. Having become a common carrier of oil between certain points, its right to arbitrarily refuse to accept and perform its common carrier duties with regard to the demands for transportation of oil between other points could not be conceded.

The oil company has distributing stations at Linnton, Oreg., Nome, Alaska, and Honolulu, Hawaii, from which the oil is delivered as it is sold. Linnton is but 8 miles west of Portland on the Willamette River, and oil is distributed from that point to purchasers in Portland and the surrounding territory. Megler, Wash., another unloading port for petitioner's steamers, is at the mouth of the Columbia River on the line of the Oregon-Washington Railroad & Navigation Company.

As petitioner's rail line does not extend north of Portland, we are met with the question of whether or not its participation in joint rates on oil from any of the loading ports to points in Washington makes it a competitor with its oil steamers for this traffic within the

meaning of the act. We have uniformly held that a carrier may unjustly discriminate against a point by participation in joint rates thereto or therefrom, although its line does not reach that point. By participating in joint rates each carrier in a measure becomes responsible for the actions of the other participating carriers, and the joint transportation via the different lines is an arrangement under which each of the carriers participating therein is, in fact, serving any point to or from which the joint rate applies. If a carrier by participation in joint rates serves a point beyond its line, it certainly may compete with another carrier operating to that point. Can it be successfully contended that petitioner by participating in joint rates on oil from Port Costa to Seattle is competing with its oil steamers plying between these same points only as far as Portland? We think not. The rail transportation can not be considered as performed upon traffic to Portland when as a matter of fact it is traffic to Seattle, to which point it is destined when it leaves Port Costa. *T. & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111.

In *Application S. P. Co. in re Operation S. S. Co.*, 82 I. C. C., 692, we said:

The words "do or may compete" * * * mean a probable, potential competition, as when the water line is entirely divorced from the railroad.

Let us assume that the oil company's steamers are entirely divorced from petitioner. Could it be said that petitioner would not solicit shipments of oil destined to Washington points from the loading ports because its rail line does not extend beyond Portland? By no means. Petitioner undoubtedly would make an effort to secure a share of that business, and if it handled any of it, certainly it would be in competition with the independently operated steamers.

One of the prime purposes of the Panama Canal act was to prevent a railroad from owning and operating through the Panama Canal any carrier by water with which it does or may compete. If Congress did not intend this provision to include such competition as does or may exist by the owning rail line participating in joint transcontinental rail rates with other carriers, this provision is meaningless, as no railroad or railway system in the United States operates its own line across the continent, and therefore there could be no competition between any rail carrier in the United States and steamers owned by it plying between Atlantic and Pacific ports via the Panama Canal. The purpose of this provision in the act was to give shippers and owners of vessels the use of our newest avenue of commerce in free and open competition with the rail lines of the United States. Unless the act means that a carrier owning such a boat line and participating in joint transcontinental rates would be

in competition with its steamers operating from Atlantic to Pacific ports through the canal, this part of the act is of no effect.

The fact that the oil steamers are engaged principally in the transportation of petitioner's oil does not, in our opinion, differentiate that transportation from that of oil carried for other parties in such way as to place the transportation outside the scope or provisions of the act. *The Pipe Line cases*, 234 U. S., 548. By using its rail line to haul its own oil petitioner may compete with its oil steamers engaged in the same transportation, within the meaning of the act. The act says "does or may compete," and no provision is made with regard to the ownership of the commodity transported. It is obvious that this oil is not for petitioner's use in the operation of its lines. In other words, that it is not what is commonly known as "company material."

We are of opinion, and find, that petitioner's rail lines may compete with its oil steamers in their operations from the loading ports to points in the states of Washington and Oregon within the meaning of the act.

It does not appear that there is, or may be, competition between petitioner's rail lines and its steamers in their operation to Alaskan ports. If petitioner does not participate, by its rail line or in connection with other lines, in transportation of oil from points in California to a port for transshipment to Alaska, and it does not appear that it does, the continued operation of its oil steamers between the loading ports and ports of Alaska, carrying only oil destined to Alaska, is not, and will not be, in violation of the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act.

It does not appear that there is, or may be, competition between petitioner's rail lines and its steamers in their operation from the loading ports to the Hawaiian Islands, and it therefore follows that the continued operation of these steamers between the loading ports and the Hawaiian Islands is not, and will not be, in violation of the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act.

The oil company's principal competitors own and operate fleets of oil steamers. Petitioner asserts that it would be to the inconvenience of the public if the oil company should not be granted authority to continue the transportation of its oil in its own vessels, because the rail lines from California ports to Oregon and Washington points have not sufficient tank-car equipment to handle this traffic. The Panama Canal act does not prohibit the ownership and operation of a water line or vessels by a corporation simply because it is an oil com-

pany. It is petitioner's ownership in the oil company, and through it of the oil steamers, that brings the operations of these steamers within the prohibitions of the act. If the oil company's steamers were not indirectly owned by petitioner, and independent boats could secure this traffic, active competition would arise, and the spirit of the act would be complied with.

Nothing said herein must be construed as a finding or an expression by us that the Southern Pacific in owning a controlling interest in the Associated Oil Company and carrying its own oil is not within the prohibition of the commodities clause of the act.

We do not find that the continued ownership of these oil steamers by petitioner through the oil company and their operation from these loading ports in California to points in the states of Oregon and Washington is or will be in the interest of the public and of advantage to the convenience and commerce of the people, or that such continued operation will neither exclude, prevent, nor reduce competition on the route by water, and so far as the petition seeks a continuation of this service by water beyond July 1, 1914, it is denied, effective July 15, 1915.

In the brief filed on behalf of the oil company the following statement appears:

The application was filed out of an abundance of caution, in view of section 1 of the act to regulate commerce, as amended June 29, 1906, in which it is declared that the provisions of the act shall apply to any corporation engaged in the transportation of oil by means of pipe lines, or partly by pipe lines and partly by water in interstate commerce, and that such corporation shall be considered and held to be a common carrier within the meaning and purpose of the act.

Just what is meant by this statement is not clear. If the oil company owns any common carrier pipe lines which in their operations do or may compete with its oil steamers, we are of the opinion that such ownership and operation would come within the provisions of the Panama Canal act. The petition was signed on behalf of the oil company, but it does not refer to pipe lines, and no relief is asked for any common carrier pipe line that does or may compete with its steamer lines. The record does not disclose the location of the pipe lines referred to, and if the oil company is seeking any relief for the continued ownership and operation of pipe lines, in competition with its steamers, there is no indication thereof in the petition, and no opinion is expressed thereon.

An order in conformity with these views will be entered.

34 I. C. C.

No. 6709.

APPLICATION OF THE ANN ARBOR RAILROAD COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH THE OPERATION OF CERTAIN CAR-FERRY BOATS PLYING ON LAKE MICHIGAN.

Submitted July 22, 1914. Decided May 11, 1915.

Upon application of the Ann Arbor Railroad Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue its ownership and operation of certain car-ferry boats plying on Lake Michigan, *Held:*

1. That the existence of paralleling through all-rail routes, via Chicago, reaching the ports served by the petitioner's boats, in which the petitioner participates, makes it possible for it to compete with its boats within the meaning of the act.
2. That the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the routes by water under consideration.

A. L. Smith for Ann Arbor Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

The Ann Arbor Railroad Company petitions herein, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, for authority to continue its operation of car ferries across Lake Michigan.

The Ann Arbor Railroad Company operates a line of railroad extending from the city of Toledo, Ohio, in and through the state of Michigan for a distance of nearly 300 miles to the village of Frankfort, Mich., on the eastern shore of Lake Michigan. In connection with its rail operations this petitioner owns and operates three car-ferry boats used for the transportation of loaded and empty freight cars from its terminus at Frankfort to the ports of Manistique, where said cars are delivered to and received from the Soo line and the Manistique & Superior Railroad; Menominee, where deliveries are made to the Chicago, Milwaukee & St. Paul Railway

and the Chicago & North Western Railway; Kewaunee, where connection is made with the Green Bay & Western and, over that line, with the Chicago, Milwaukee & St. Paul; and Manitowoc, where cars are interchanged with the Chicago & North Western and the Soo line roads; all on the west bank of Lake Michigan.

The car-ferry boats owned and operated by the petitioner are designated as Nos. 3, 4, and 5. Nos. 3 and 4 have a capacity of 21 cars each, while No. 5 has a capacity of 32 cars. The principal commodities moving via this route westbound are coal to the northwest and grain, lumber, and grain products moving eastbound. Ninety-nine per cent of the freight moving via these boats is through traffic. The boats are also equipped to carry passengers. No package freight is hauled except when loaded in cars.

The boats of the petitioner are operated as a part and parcel of its railroad and not as a separate organization. The water service here concerned is practically a terminal operation. The distance between the ports served varies from 60 to 100 miles, the longest distance being from Frankfort to Manistique. The operation of these car-ferry boats by the petitioner furnishes a valuable adjunct to its railroad system, in that it is able thereby to effect connections with these northwestern roads for the movement of through traffic, from which it would otherwise be excluded, and it appears that from 45 to 55 per cent of the traffic moving via the line of the petitioner is in connection with these lake ferry routes.

It appears that conditions in the territory served by the rails of the petitioner have changed since their construction, and that whereas formerly this territory was a large producer of timber and lumber products, with the traffic incident to such production, now that the timber resources have been practically exhausted this traffic has greatly decreased and there has been no marked agricultural development or other local development which furnishes traffic to replace that formerly incident to the lumber projects. It is therefore important to the petitioner that its participation in the through traffic which it is able to secure by means of its car-ferry boats be preserved to it.

It appears that the petitioner absorbs out of its rail revenue the cost of this ferryboat service and that if it were forced to depend on an independently operated ferry or ferries its absorption out of its rail revenues would be greater, since it would then be required to pay not only the cost of operating such ferryboats, but a reasonable profit thereon to the independent operators.

The routes from the west bank ports via these car ferries and the petitioner's rails furnish an expedited service as compared with the all-rail route from said ports via Chicago, and the rates applicable from these four ports via said route are practically the same as apply to and from Chicago from any given common point east thereof. It appears that freight may move from Manistique, Mich., to Cleveland, Ohio, in four days via this ferry and rail route, whereas for an all-rail movement via Chicago the time required would be twice as long.

It does not appear that the petitioner owns paralleling rails reaching the ports served by its boats, nor does it appear that it is an integral part of a system owning such rails. It does appear, however, from tariffs on file with the Commission, that the petitioner participates in paralleling through all-rail routes via Chicago to the ports served by its boats, and that it is possible for the petitioner, by means of such through all-rail routes, to compete with its boats within the meaning of the act.

It appears that the rates, rules, and regulations applicable via the water service here under consideration are filed with the Commission as a part of the petitioner's tariffs.

From a consideration of all the circumstances and conditions, the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the several routes by water here under consideration. An order will be entered accordingly.

24 L. C. C.

No. 6691.

**APPLICATION OF THE PERE MARQUETTE AND BESSEMER
& LAKE ERIE RAILROAD COMPANIES, UNDER THE
PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE
COMMERCE, AS AMENDED BY THE PANAMA CANAL ACT,
CONCERNING THEIR INTEREST IN AND OPERATION OF
CERTAIN CAR-FERRY BOATS.**

Submitted June 26, 1914. Decided May 11, 1915.

Upon application of the Pere Marquette Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue its interest in and operation of certain ferryboat lines, and upon a like application of the Bessemer & Lake Erie Railroad Company to continue its interest in and joint operation of the Marquette & Bessemer Dock & Navigation Company; *Held:*

1. That the record does not show that the rail lines of the Pere Marquette Railroad Company compete with its ferryboats operating on the Detroit River between Detroit, Mich., and Windsor, Ontario, and on the St. Clair River between Port Huron, Mich., and Sarnia, Ontario, within the meaning of the act to regulate commerce as amended.
2. That the Pere Marquette Railroad Company is a party to paralleling through all-rail routes via Chicago to the ports served by its ferryboats operating on Lake Michigan, and that within the meaning of the act said petitioner may compete with such ferryboats.
3. That the petitioners, Pere Marquette Railroad Company and Bessemer & Lake Erie Railroad Company, are parties to paralleling through all-rail routes between the ports served by their ferryboat operating on Lake Erie, and that said petitioners may compete with said ferryboat within the meaning of the act.
4. That the record shows that the existing specified services by water on Lake Erie and Lake Michigan are of advantage to the convenience and commerce of the people and that a continuance thereof will neither exclude, prevent, nor reduce competition on the respective routes by water under consideration. The ferryboat line of the petitioners will be required to file such of its tariffs as are not now on file with the Commission in accordance with the provisions of the act to become effective by July 1, 1915.

S. L. Merriam for Pere Marquette Railroad Company and Bessemer & Lake Erie Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This case involves the application of the Pere Marquette Railroad Company, under the provisions of section 5 of the act, as amended by the Panama Canal act, to continue its interest in the several ferryboat lines and ferryboats operated in connection with its railroad system.

The Bessemer & Lake Erie Railroad Company joins in the application in so far as concerns its interest in the Marquette & Bessemer Dock & Navigation Company, which is jointly owned by these two railroads.

The Pere Marquette Railroad system extends from Buffalo, N. Y., through Ontario, Canada, to Windsor, Ontario, where it is intersected by the Detroit River. From Detroit it extends westerly to Chicago, its western terminus. Another branch of the road in Canada extends to Sarnia, Ontario, where it is intersected by the St. Clair River. This branch then extends from Port Huron, Mich., in a westerly direction to Ludington, Mich., on the east bank of Lake Michigan. Where its system is intersected by the two rivers, the Pere Marquette operates car-ferry boats which serve to unite its rails in Ontario with its rails in the state of Michigan. Its car-ferry boat operating on the Detroit River between Detroit, Mich., and Windsor, Ontario, is known as *Pere Marquette 14*, and has a capacity of 26 cars. The car-ferry boat operating on the St. Clair River between Port Huron, Mich., and Sarnia, Ontario, is designated as the *International*, with a capacity of 15 cars.

It does not appear that the Pere Marquette Railroad Company owns paralleling rails reaching the ports served by either of these river car ferries. Nor is it a part of a railroad system owning such paralleling rails. Nor does it appear that the Pere Marquette is a party to any paralleling through all-rail routes between such ports, and it does not appear, therefore, that said petitioner does or may compete for traffic with its said ferryboats within the meaning of the act.

It appears from the record that the Pere Marquette Railroad Company owns and operates five car-ferry boats on Lake Michigan from Ludington, Mich., to Milwaukee, Manitowoc, and Kewaunee, on the west bank of Lake Michigan, which form extensions of its line terminating at Ludington and enable it to connect with certain rail carriers serving these west bank ports. These ferryboats are known as *Pere Marquette*, *Pere Marquette 17*, *Pere Marquette 18*, *Pere Marquette 19*, and *Pere Marquette 20*, and are all equipped with limited passenger accommodations, operating practically throughout the entire year, making two trips a day to Manitowoc and Milwaukee.

It does not appear from the record that the Pere Marquette Railroad Company owns paralleling rails reaching the ports on the west bank of Lake Michigan served by its ferryboats, nor does it appear that it is an integral part of a railroad system owning such paralleling rails, but it does appear from tariffs on file with the Commission that this petitioner is a party to paralleling through all-rail routes to said ports, by means of which it may compete for traffic with its ferryboats within the meaning of the act.

It appears from the record that these ferryboats are a very essential part of the Pere Marquette Railroad system and enable this petitioner to participate in through transportation to the northwest, from which it would otherwise be excluded. It further appears that the independent operation of the necessary car ferries extending from its terminus at Ludington would be impracticable, since it appears that no one would be able to operate them independently for what the petitioner could afford to pay an independent ferry for getting its cars across Lake Michigan in competition with the all-rail routes. These car-ferry boats appear to be operated on fixed schedules to expedite the through movement of freight.

From a consideration of all the circumstances and conditions, the Commission is of opinion and finds that the existing specified service by water on Lake Michigan is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the routes by water under consideration.

The Pere Marquette Railroad Company, through operating rights over the London & Port Stanley Railroad from St. Thomas, Ontario, reaches Port Stanley, Ontario, a point on the north bank of Lake Erie.

The Bessemer & Lake Erie Railroad Company operates a line of railroad from Pittsburgh, Pa., to Erie, Pa., with a branch extending to Conneaut Harbor, Ohio, a point on the south bank of Lake Erie.

The Marquette & Bessemer Dock & Navigation Company is a corporation organized under the laws of the state of New Jersey, with a capital stock of \$50,000, divided into 500 shares of the par value of \$100. Two hundred and fifty shares, or one-half of said stock, is owned by the Pere Marquette Railroad Company, and the remainder of said stock, the other half, is owned by the Bessemer & Lake Erie Railroad Company.

The Marquette & Bessemer Dock & Navigation Company, hereafter referred to as the navigation company, owns and operates one steel car-ferry boat with a capacity of 30 cars on Lake Erie between Conneaut, Ohio, and Port Stanley, Ontario.

It does not appear that either of the petitioners owns paralleling rails reaching the ports served by said ferryboat or that either is an integral part of a railroad system owning such paralleling rails. It does appear, however, from tariffs on file with the Interstate Commerce Commission, that each of these petitioners is a party to through all-rail routes via the Buffalo gateway to said ports, and it therefore results that each of the petitioners may compete for traffic with their boat within the meaning of the act.

It appears from the record that the chief traffic hauled by the petitioners' ferryboat is coal for railroad use in Canada, originating on the line of the Bessemer & Lake Erie Railroad. By means of the ferryboat these petitioners are able to furnish an expedited service for this traffic, which would otherwise have to move through the Niagara frontier and be subject to the delays incident to the congestion there.

From a consideration of all the conditions and circumstances, the Commission is of the opinion and finds that the existing specified service by water on Lake Erie is being operated in the interest of the public, and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration.

The Marquette & Bessemer Dock & Navigation Company will be expected to file such of its tariffs with the Commission as are not now on file, according to the provisions of the act to regulate commerce, to be effective by July 1, 1915. The same also applies to the water service on Lake Michigan operated by the petitioner, Pere Marquette Railroad Company.

An order will be entered accordingly.

34 I. C. C.

No. 6937.
PARLIN & ORENDORFF COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 1, 1914. Decided April 26, 1915.

The discrimination at present existing against Canton, Ill., in favor of Peoria, Ill., in the rates on agricultural implements in carloads to local points on the Illinois Central Railroad in Kentucky, Tennessee, and Mississippi not found to be undue. The question of unreasonableness of rates from Canton not decided, owing to readjustment being made in connection with Fourth Section Order No. 3866. Complaint dismissed.

W. M. Cave for complainant.

A. P. Humburg for Illinois Central Railroad Company.

G. H. Crosby for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of agricultural implements, having its principal place of business at Canton, Ill. By complaint, filed May 22, 1914, it alleges that defendants charged unreasonable and discriminatory rates for the transportation of agricultural implements in carloads from Canton to various local points in Kentucky, Tennessee, and Mississippi, on the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad.

As the last-named carrier was not made a party defendant, the traffic involved to points on the Illinois Central only can be considered.

Peoria, on the Illinois Central in central Illinois, is a city of 60,000 or 70,000 inhabitants and is served also by 12 other railroads. Canton, a town of 10,000 or 11,000 inhabitants, is located about 20 miles southwest of Peoria, on a branch line of the Chicago, Burlington & Quincy Railroad and on the main line of the Toledo, Peoria & Western Railway. Shipments from Canton to the destination points involved moved over the Chicago, Burlington & Quincy to East St. Louis; thence over the Illinois Central, through Cairo, Ill., to destination; shipments from Peoria to the same points move exclusively over the Illinois Central through Cairo. The distances from Canton range from 350 to 600 miles, from 30 to 35 miles greater than the distances from Peoria.

During the period from June 25, 1908, to September 9, 1910, Canton took specific through commodity rates equal to the rates applicable from Peoria on agricultural implements to all points on the Illinois Central in Kentucky, Tennessee, and Mississippi. On the date last mentioned, the commodity rates from Peoria, Canton, and other points were canceled with provision for the application of class rates. Class K rates, subject to the southern classification, applied to agricultural implements. The class K rates from Peoria, which were the same in most cases as the specific commodity rates previously in effect, did not apply, however, from Canton, and since the cancellation of the commodity rates referred to that community has been compelled to pay to most local points on the Illinois Central the combinations of intermediate rates based on East St. Louis. The Peoria rates apply to a few local points on the Illinois Central and to all common or junction points served by lines other than the Illinois Central. An exhibit introduced by complainant comparing rates from Peoria and Canton to certain illustrative destinations shows that while the former commodity rates ranged from 33 to 52 cents per 100 pounds, the present rates range from 36½ to 60½ cents, representing increases averaging from 7 to 8 cents per 100 pounds.

Complainant's attack is directed entirely against the increased rates established September 9, 1910. The contention is that they should not exceed the rates in effect immediately prior to that date. Complainant's witness stated specifically that complainant had no interest in the relation maintained between Peoria and Canton, but introduced in evidence a statement showing that points of origin on the Illinois Central some 200 or 300 miles farther than Canton from certain destination points representative of the destinations here involved have lower rates on agricultural implements than the rates assailed from Canton. Defendants argue that Canton properly should take higher rates than Peoria, because Peoria and the destination points involved are all on the Illinois Central, so that the destination points can be reached with a single continuous haul from Peoria without intermediate switching or terminal service, whereas shipments from Canton require a two-line haul between 30 and 35 miles longer than the single-line haul from Peoria, with expensive terminal service at East St. Louis and the absorption of a switching charge there imposed; that through rates from north of the Ohio River to points south of the river are constructed generally on the basis of the full combinations over the river; and that the circumstances described relative to transportation from Canton render reasonable the construction of rates from Canton on this basis.

In addition, defendant's witness testified that Canton was accorded the same treatment as other points in the former Peoria group not

reached by the rails of the Illinois Central, which points all pay higher rates than Peoria to local stations on the Illinois Central south of the Ohio River. It appears, moreover, that agricultural implements do not load much in excess of 20,000 pounds per car; that they are quite bulky in proportion to their weight; and that they are subject to damage in transit.

Upon all of the facts of record we find that defendants are justified in charging higher rates to the points of destination here involved from Canton than from Peoria, and that the present disparity between the rates from the two points is not undue. We do not decide whether the rates from Canton are or are not unreasonable *per se*. Practically all the rates from points north of the Ohio River to points south of the river are composed of local or proportional rates to and from Ohio River crossings, and the carriers are now revising their tariffs covering the factors south of the river, with a view to removing existing inconsistencies and fourth section departures under the permission granted in connection with our Fourth Section Order No. 3866. This revision undoubtedly will result in certain changes in the rates here assailed, and we therefore deem it advisable to await the completion of the revision, and not attempt to fix specific rates from Canton to the destinations here involved upon the record here presented.

An order dismissing the complaint without prejudice will therefore be entered.

84 I. C. C.

No. 6796.
SAN TOY COAL COMPANY
v.
AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY
ET AL.

Submitted October 17, 1914. Decided March 30, 1915.

1. Complainant attacks as unreasonable and unduly discriminatory defendants' rates on bituminous coal in carloads from San Toy, Ohio, and other points in the Crooksville, Ohio, coal district to Chicago, Ill., and to points in the states of Illinois, Indiana, and Michigan. Upon the facts disclosed of record; *Held*, That the rates unjustly discriminate against shipments from mines of complainant and others located in the same district in favor of mines located in the middle district of Ohio. Defendants required to remove the discrimination.
2. Complaint is also made of rates from San Toy and other points in the Crooksville district to Lake Erie ports for transshipment; *Held*, That the evidence fails to show that the rates complained of are unreasonable or otherwise in violation of law.

G. P. Boyle and *W. M. Hopkins* for complainant and interveners.

W. A. Parker for Baltimore & Ohio Railroad Company.

James Stillwell for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

W. W. Collin, jr., for New York Central lines.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this complaint it is alleged that the rates of the defendant carriers on bituminous coal in carloads from San Toy, in the state of Ohio, to Chicago and to points in the states of Michigan, Indiana, and Illinois, and to Cleveland, Sandusky, Toledo, and other points in the state of Ohio, for transshipment by the lakes, are unreasonable and unjustly prejudicial to San Toy, and unduly preferential of points in the same coal field and in adjacent coal fields.

The Peabody Coal Company and the Upson Coal & Mining Company, owning mines respectively at McCuneville and Dixie, both in the state of Ohio, and in the immediate vicinity of San Toy, have intervened in support of the complainant and in behalf of themselves. Reparation is asked both in the complaint and intervening petition.

The Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis when referred to jointly are hereinafter called the Pennsylvania system, and the Zanesville & Western, Toledo & Ohio Central,

and Lake Shore & Michigan Southern when referred to jointly are hereinafter called the New York Central system. The mines at San Toy, Dixie, and McCuneville are all on the Baltimore & Ohio Railroad; the first-named station lies 22 miles south of Zanesville, while the two mines last mentioned are about 12 miles west of San Toy. The coal mines of complainant and interveners are in what is denominated, by mine owners and mine operators in the region and by the Pennsylvania system in its tariffs, as the "Crooksville" coal district. On the New York Central system and the Baltimore & Ohio the region is referred to as the Hocking and "Shawnee" district, respectively. For the purposes of this report the locality will be referred to as the Crooksville district. The latter extends in a southerly direction from a few miles north of Zanesville to San Toy and Shawnee. The mines in the district are reached by the Pennsylvania, the New York Central lines, and the Baltimore & Ohio. The San Toy mines were formerly owned by the carrier last named, but were in 1910 sold to interests now represented by the complainant. In 1903 to reach these mines the Baltimore & Ohio constructed 4 miles of track from San Toy to Sayre, and to avoid further construction to its main line at Zanesville that company entered into trackage arrangements with the Pennsylvania and New York Central systems and with the Zanesville Terminal Company, by virtue of which coal from San Toy is transported over the tracks of the carriers last named from Sayre to a point of connection with the Baltimore & Ohio near Zanesville.

The rates to Chicago and stations in Michigan, Illinois, and Indiana will be considered first. In making rates to points in these states, the Ohio coal fields are grouped. North and east of the Crooksville district and separated from it by a small undeveloped area of coal lands is the middle district, served by the Baltimore & Ohio, the Pennsylvania and New York Central systems, and the Wheeling & Lake Erie. South of the latter district and northeast of the Crooksville region lies the Cambridge district, to the east of which is a field known both as the Ohio No. 8 and the Wheeling Creek. South of the Crooksville district is the Hocking thick-vein district. All the mines in the latter district and most of the mines in the Crooksville district are grouped with and take the same rates as the No. 8 and Cambridge mines. To points in the territory north of the line of the Lake Shore & Michigan Southern beginning at Vermilion, extending south just east of Oberlin and Wellington, north of the line of the Erie to Mansfield, thence to Lima, and on and north of the line of the Pennsylvania Company to Chicago the middle district mines take a differential of 10 cents a ton under the other districts.

The testimony shows that in both the Crooksville and the Middle districts a thin seam of coal known as vein No. 6 is mined. A thin

vein of coal is one not exceeding 4 feet in thickness. Throughout the Ohio No. 8, Cambridge, and thick-vein Hocking districts the veins of coal run from 5 to 13 feet in thickness. Because of the higher wage scale paid to the miners and the higher relative cost per ton to bring it to the tippie of the mine the cost of mining thin-seam coal is from 12 cents to 14 cents a ton greater than the cost of mining thick-seam coal. The coal produced in both the thick and thin vein mines is actively competitive. Both are excellent for domestic use and both are desirable for steam purposes:

The history of the rate adjustment from the Ohio coal fields to Chicago and Grand Rapids, as illustrative of the general situation, is as follows: Some 50 years ago mines in what is now known as the Hocking thick-vein district were opened; about the same time operations began in the Ohio No. 8 and Cambridge districts, and all three districts were given the same rates to Chicago; about 25 years ago mines were opened in the middle district and also in the Crooksville district on the lines of the Cincinnati & Muskingum Valley (now the Pennsylvania Company) and Zanesville & Western. Originally there were applied to the middle district and Crooksville mines the same freight rates as were maintained from all the other mines in that section of Ohio, but later the operators of the mines in the middle district, having urged upon the carriers their inability to compete with the thick-vein operators because of the higher cost of mining the thin-vein coal, the carriers recognized this commercial condition and accorded mines in the middle district a rate of 10 cents per ton less than was maintained from the thick-vein districts to points in the territory above described. This was accomplished by grouping the mines of the middle district separately from the other districts. The Pennsylvania system then made applicable from the thin-vein mines on its lines in the Crooksville district to Chicago and points in Indiana and Illinois on its lines the same rate as was published from the middle district; while the lower rate was not published from the other thin-vein mines in the Crooksville district the same rates were, as a matter of fact, unlawfully accorded them. Thus it appears that up to the latter part of 1902 the middle and Crooksville districts were on a parity with respect to freight charges to Chicago and points generally in the northwest.

In 1903 the San Toy mines were opened and the Baltimore & Ohio established therefrom the rates applicable from the thick-vein districts. Except from the mines on the lines of the Pennsylvania system, rates from the Crooksville district are now the same as from the thick-vein districts. There are 14 mines in the Crooksville district on the line of the Pennsylvania Company, extending from New Lexington, Ohio, north to Zanesville, and in the vicinity of San Toy, Dixie, and McCuneville, to which the Pennsylvania system accords,

via its lines to Chicago and points in Indiana, the middle district rates.

The average distance from points in the middle district to Chicago is 401 miles and the rate \$1.55 per ton; from the Crooksville district the average distance is 398 miles and the rate \$1.65 per ton over the Baltimore & Ohio and the New York Central system and \$1.55 on the Pennsylvania system; the average distance from points in the No. 8 district is 449 miles and the rate is \$1.65.

Complainant contends that the yield to carriers on coal, a low-grade dense traffic, should be somewhat less than the average received on all traffic. The average revenue per car-mile received by the Baltimore & Ohio for the year ending June 30, 1913, was 14.24 cents for an average haul of 197.53 miles; at the rate of \$1.55 asked for by complainant coal from the Crooksville district for an average haul of 398 miles would yield 17.13 cents per car-mile. The complainant also shows that under a rate of \$1.55 the per car earnings to Chicago would be \$68.20, as against the average per car earnings of \$28.13 on all traffic during the year 1913. The complainant contends that the defendants, including the Baltimore & Ohio, having voluntarily recognized by a reduction of the freight rates the higher cost of mining coal in the middle district, it must accord under the same conditions the same consideration to the operators in the Crooksville district, and that their failure to do so unjustly discriminates against the Crooksville mines in favor of mines in the middle district.

The only defense of the situation complained of was presented by the Baltimore & Ohio. As will be recalled, the Pennsylvania makes the same rates from both districts. It is urged by the Baltimore & Ohio that the present rates from the Crooksville district to Chicago and points in Indiana, Michigan, and Illinois having been in effect for more than 12 years, are presumptively reasonable and that comparison with other rates in the same territory for similar distances and with rates from the middle district via the lines of the Baltimore & Ohio alone shows that the rates from Crooksville are reasonable. To support this contention, an exhibit was filed of record showing a comparison of the rates on coal from San Toy in the Crooksville district and Midvale, Ohio, in the middle district, to representative destinations, together with the distances over the lines of the Baltimore & Ohio and the revenue per ton-mile.

From the fact that the average distance from the Crooksville mines to Chicago and Grand Rapids is substantially the same as the average distance from the points in the middle district to the same destinations it does not necessarily follow that the higher rates from Crooksville are unreasonable. The rates from the middle district were reduced on account of the high cost of mining and are not regarded by the defendant as a proper measure of reasonable rates.

The Baltimore & Ohio also urges that comparisons of average revenue per ton-mile, per car, and per car-mile on all traffic are not fairly to be considered in a determination of the reasonableness of rates on coal.

With respect to the discrimination feature of the complaint, the contention of the Baltimore & Ohio is that middle district coal is not sold in any considerable amount either at Chicago or at other interstate points to which the lower rate applies; that Crooksville coal competes chiefly with coal from the thick-vein Hocking district; and that no discrimination forbidden by law may properly be predicated on rates which have been made with respect to mining costs or other commercial conditions. It also insists that a reduction in rates from the Crooksville district will affect also rates from other districts, and particularly from the Hocking thick-vein district; some of the latter mines are nearer Chicago than the mines of the complainant and interveners, while that market is about equidistant from some mines in both groups. While the record shows that most of the coal produced in the middle district is sold at Ohio points, it shows also that complainant and interveners at Chicago and other points meet the competition of middle district coal. It is true that Crooksville district coal is in competition with the Hocking thick-vein coal, but it is insisted by complainant and interveners that, because of the higher operating cost in the Crooksville district, they can not successfully meet this competition, nor can they successfully compete elsewhere with the mines in that district located on the Pennsylvania. That system gives to mines in the Crooksville district for hauls of substantially the same distance to Chicago and Indiana points the same rates as are maintained generally by all carriers to the same points from mines in the middle district. So far as appears from the record, transportation conditions to Chicago and Grand Rapids are practically the same from both the middle and Crooksville districts, and the average distances are substantially the same.

It is earnestly contended by the Baltimore & Ohio that to require the defendants to maintain from Crooksville the same rates as they apply from the middle district is to compel them to give recognition to commercial conditions which should play no part in fixing freight rates. The Baltimore & Ohio relies upon statements made by the Commission in *Bituminous Coal Operators v. P. R. R. Co.*, 23 I. C. C., 385, 391, to the effect that it is neither our function nor that of carriers to equalize economic or commercial conditions. In that case, however, we said:

It is to be remembered that no showing has been made as to the reasonableness of rates themselves. We would not hesitate to reduce these rates because of the threat of a reduction from competitive fields by other carriers if unreasonableness were established and if the case had been presented upon the ground of a discrimination between competing fields upon the line of the carrier defendant.

In the case before us, however, the rates are alleged to be both unreasonable and discriminatory. The evidence shows that all the mines now operating in the Crooksville district are working in thin-vein seams. At one time in the southern part of the Crooksville district near Shawnee on the Baltimore & Ohio there were a number of thick-vein mines; these have all been worked out and are now being abandoned. There are no thick-vein mines in the middle district.

The Baltimore & Ohio is the only carrier serving the mines of the complainant and interveners. It also serves mines in the middle district and makes no claim that it was forced by the action of any other carrier to extend the lower rate to that district. The history of the rates shows, as we have stated, that soon after the middle district mines were opened they were given a rate 10 cents lower than applied from thick-vein mines, which lower rate tended in a measure to equalize the disadvantage under which the thin-vein operators were laboring. It is undisputed that the character of the coal and the mining conditions are identical in the Crooksville and the middle districts. If the cost of mining coal is considered by the carriers in fixing the rates from one district, the same consideration can not lawfully be denied by the same carriers serving another district in which there are mines operating under the same conditions. In *Black Mountain Coal Land Co. v. S. Ry. Co.*, 15 I. C. C., 286, 292, we said:

A carrier can not lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law and could not in justice be required to equalize natural disadvantages, such as location, cost of production, and the like. Where, however, the same carrier serves two districts which, by their location, the character of their output, and distance from markets where their product must be disposed of, are in substantially similar circumstances and conditions, the serving carrier can not lawfully prefer one to the other in any manner whatsoever.

If, as they claim, carriers may, and frequently do, establish and maintain rates lower than they could be required to publish to meet competitive or other conditions at a particular point, they are not thereby relieved from the obligation imposed by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet the same conditions at another point entitled to the same consideration.

The ton-mile earnings of 4.06 mills from San Toy, Sealover, and Shawnee to Chicago and 4.31 mills from the same points to Grand Rapids for average hauls of 406 and 382 miles, respectively, do not indicate that the rates are too high. The car-mile earnings of the carriers on all traffic compared with similar earnings on coal shipped from and to the points involved and other computations made on similar bases are proper to be considered and should be given due

weight in reaching a conclusion as to the reasonableness of the rates in question. Giving due consideration to all the facts shown of record, we are not convinced that the rates in question are unreasonable *per se*. We find, however, that the maintenance by the defendants to Chicago, Grand Rapids, and other interstate points of the lower rates from mines in the middle district than are contemporaneously charged to the same destinations from mines in the Crooksville district is unduly prejudicial to complainant and interveners and subjects them to undue prejudice and disadvantage, in violation of section 3 of the act. This discrimination the defendants will be required to remove. We are not impressed with the contention of the Baltimore & Ohio that if the discrimination be removed by a reduction to the level of the rates from the middle district of the rates from the mines of complainants and interveners there will necessarily or probably follow like reductions from other coal districts. The Baltimore & Ohio does not reach the Hocking thick-vein district. For many years the Pennsylvania system has maintained from mines on its line in the Crooksville district to Chicago and points in Indiana rates 10 cents per ton lower than those applied at the same time from mines in the same district located on the rails of the Baltimore & Ohio. This has not resulted in disturbing the rates from other districts. It is difficult to understand how our action in placing the mines on the Baltimore & Ohio on the same rate basis accorded to mines on the Pennsylvania system and all other carriers from the middle district will necessarily result in a reduction of the rates from districts where different conditions prevail.

A somewhat different situation than has just been considered exists with reference to the rates to Lake Erie ports for transshipment, of which complaint is made. It is the contention of complainant that these rates from the Crooksville district are unreasonable when compared with the rates from the middle district and No. 8 district. The rates per net ton from the Crooksville and Hocking thick-vein districts for the past 10 years have been as follows: Previous to April 1, 1903, 77 cents; April 1, 1903, to April 1, 1907, 80 cents; April 1, 1907, to May 26, 1912, 85 cents; and May 26, 1912, to date, 75 cents.

The average distances from various districts to the Lake Erie ports named, with the rates per ton f. o. b. docks, are shown in the following table:

From—	To Sandusky.		To Lorain.		To Cleveland.		Grand average distance.
	Average distance.	Rate.	Average distance.	Rate.	Average distance.	Rate.	
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
Middle district.....	155	\$0.65	109	\$0.65	114	\$0.60	123
Crooksville district.....	158	.75	218	.75	156	.75	173
No. 8 district.....	200	.75	154	.75	132	.75	163

The following table shows distances in miles, rates per ton, and the yield per ton-mile in mills from various coal districts to Lake Erie ports:

	Distance.	Rate.	Yield.
	Miles.		Mills.
San Toy to Sandusky.....	166	\$0.75	4.52
San Toy to Lorain.....	227	.75	3.30
Hocking district to Toledo (H. V. Ry.).....	193	.75	3.88
Pittsburgh to lake ports.....	160	.78	4.87
No. 8 district to Huron (W. & L. E.).....	146	.75	5.1
No. 8 district to Cleveland (Pennsylvania).....	135	.75	5.6

Rates on coal from the Ohio and related coal districts to Lake Erie ports have heretofore been considered by the Commission. In *Boileau v. P. & L. E. R. R. Co.*, 22 I. C. C., 640, we held that a rate of 88 cents from the Pittsburgh district to Ashtabula was unreasonable to the extent that it exceeded 78 cents. For the average haul of 160 miles to all the lake ports that rate yields per ton-mile earnings of 4.87 mills. In *Pittsburgh Vein Operators of Ohio v. Pennsylvania Co.*, 24 I. C. C., 280, we held unreasonable a rate of 85 cents from the No. 8 district of Ohio to Huron and Cleveland, and prescribed a maximum rate of 75 cents. The ton-mile yield at the reduced rate for an average haul of 140 miles is 5.3 mills. In *New Pittsburgh Coal Co. v. H. V. Ry. Co.*, 24 I. C. C., 244, we found not to be unreasonable a rate of 75 cents on coal shipped from the Hocking coal district to Toledo. The distance was 193 miles, and the yield per ton-mile 3.8 mills. Rates to the lakes from the various coal fields competing at the ports bear a relation to each other, and it is contended by complainant that the Commission has not considered in any case the relation to one another of the Ohio districts with respect to rates to the lakes. Even if this were the fact we may not properly disregard the relationship between the rates from the Ohio districts and those from other districts, the coal from which seeks competitive markets under like conditions. Nor may we with propriety consider San Toy alone, or compare rates from that station with rates from selected points in other districts. To consider each coal-producing point with respect alone to distance would be destructive of all district or group rates.

In making rates to lake ports for transshipment the carriers select the nearest ports where they have adequate terminal and unloading facilities. For instance, the rate from Bergholz, in the middle district, to Cleveland, a distance of 107 miles, is 60 cents. The average distance from the middle district to Cleveland is 120 miles. From San Toy to Sandusky the distance is 166 miles, and at the rate of 75 cents now in effect the ton-mile earnings are 4.52 mills. The rate to Sandusky from the middle district is 65 cents for a dis-

tance of 155 miles; the complainant alleges that the rate from the Crooksville district is unreasonable, because for a distance of but 157 miles it is 10 cents higher.

The following table shows the average short-line distances and rates per net ton from the districts named to Sandusky, Lorain, and Cleveland:

Middle district to:

Sandusky.....	miles..	155
Lorain.....	do....	100
Cleveland.....	do....	94
		<hr/>
Average.....	do....	116
Rate per ton.....	cents..	65

Crooksville district to:

Sandusky.....	miles..	157
Lorain.....	do....	218
Cleveland.....	do....	155
		<hr/>
Average.....	do....	176
Rate per ton.....	cents..	75

Ohio No. 8 district to:

Sandusky.....	miles..	180
Lorain.....	do....	147
Cleveland.....	do....	121
		<hr/>
Average.....	do....	149
Rate per ton.....	cents..	75

Considered with relation to rates generally from competing coal fields to Lake Erie ports, the rates to the same ports from the mines of the complainant and interveners are not shown to be discriminatory. Nor can we find from the record that they are unreasonable. The rate complained of from San Toy to Sandusky and Lorain appears to be fairly in line with the rates found reasonable by the Commission in the other cases cited. As a whole the mines in the middle district and the No. 8 district are much nearer to ports on Lake Erie than are the mines of complainant. We have given full consideration to the contentions of the complainant in the light of all the facts of record and do not find that the rates to Lake Erie ports, of which complaint is made, are unreasonable or otherwise unlawful. Under the circumstances of this case we are of opinion that no reparation should be awarded.

An order will be entered in accordance with the findings made herein.

INVESTIGATION AND SUSPENSION DOCKET No. 540.
LUMBER RATES FROM POINTS IN ARKANSAS AND
OTHER STATES TO SIOUX CITY, IOWA.

Submitted April 10, 1915. Decided May 10, 1915.

Proposed increased rates on yellow-pine lumber from the southwestern blanket to Sioux City, Iowa, found not to be justified.

S. W. Moore and *J. M. Souby* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

H. G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

E. A. Haid for St. Louis Southwestern Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and receivers thereof.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

F. H. Wood for Southern Pacific Company.

J. B. Driggs for Chicago, Burlington & Quincy Railroad Company.

T. J. Freeman for Texas & Pacific Railway Company.

C. E. Childe for Sioux City Commercial Club.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The carriers are called upon in this proceeding to justify a proposed increased rate of 30 cents per 100 pounds on yellow-pine lumber in carloads from the producing territory west of the Mississippi River, generally described as the southwestern blanket, to Sioux City, Iowa. From a territory lying north of this blanket, described in certain tariffs as group 8, a rate of 29 cents to the same destination is proposed. The present rate from both territories is 28 cents. The tariff schedules under suspension were issued to become effective on November 16, 1914, but upon protests by lumber-shipping interests at Kansas City, Mo., and Houston, Tex., and by the traffic bureau of the Sioux City Commercial Club, of Sioux City, Iowa, they were suspended by appropriate orders of the Commission until September 16, 1915. Evidence was not offered with particular reference to the proposed rate of 29 cents and it is therefore not discussed.

The producing territory here involved is the so-called southwestern blanket, which has been sufficiently described in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33, and in earlier cases there cited. From this territory the rate to Kansas City is 24 cents. The reasonableness of this rate has not been questioned. To Omaha and Lincoln, Nebr., and Des Moines, Iowa, referred to as the Omaha group, the rate is 25 cents, which was found to be reasonable in *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 18 I. C. C., 532. The rate to this group was again in issue in a recent case wherein a proposed increase to 26½ cents was found not justified. *Lumber Rates from Helena, Ark., and Other Points*, 33 I. C. C., 297.

We have also had occasion to test the rate to Sioux City. To that point the rate of 30 cents here proposed was formerly in effect. In *Sioux City Commercial Club v. A. & S. R. R. Co.*, 24 I. C. C., 177, we held upon the evidence there presented and "in view of the rate of 25 cents per 100 pounds established by the Commission to Omaha" that the carload rates on yellow-pine lumber to Sioux City should not exceed 28 cents per 100 pounds. It thus appears that the issues now before us involve *inter alia* the relationship of the rates to Omaha and to Sioux City, which has already received consideration by this Commission.

The evidence offered by the respondents in justification of the increase to 30 cents is mainly of a general character, but in part has special reference to the movement to Sioux City. That of a general character embraces the history of lumber rates from the southwestern territory to Missouri River cities and the increases from this territory to other points; the need of more revenue consequent upon larger expenditures for taxes, maintenance, and operation; the haul of empty cars to the producing points; and the divisions out of the through rate exacted by tap lines and connections. The evidence as to these matters is largely the same as that recently considered by the Commission in *Lumber Rates from Helena, Ark., and Other Points*, *supra*. It has substantially the same probative value as bearing upon the movement to Sioux City, and, in view of our judgment expressed in that case, does not require discussion here.

The evidence which has special reference to the Sioux City movement deals largely with the distances and the volume of movement. A test made by the respondents for six alternate months in 1911-12 showed a movement of 147 carloads from the southwestern blanket to Sioux City and an average weighted haul of 1,117 miles. Based upon this mileage the present rate of 28 cents yields 5.013 mills per ton-mile, while the proposed rate of 30 cents would yield 5.37 mills. The average weighted haul to Omaha, taken for the same period, was stated by the respondents to be 960 miles, yielding 5.21 mills

under the rate of 25 cents. It appears, therefore, that the earnings per ton-mile under the present rate to Sioux City decrease somewhat with the increased distance. Lumber loads heavily, is moved with slight risk, does not require expedited service, and is a low rated commodity. The earnings of 5.013 mills afforded by the rate of 28 cents to Sioux City, while not excessive, yield reasonable compensation for an average haul of 1,117 miles. Measured by the short-line distances from the centers of production, volume considered, on the several originating carriers, the earnings in mills per ton-mile would be greater and would average $5\frac{1}{4}$ mills or more.

In seeking to justify a differential of 5 cents to Sioux City over Omaha the respondents point to many stations no more distant from Omaha than Sioux City which take as great or greater differentials. These are bare rate comparisons, however, not supplemented by evidence as to the volume of the movements or other comparable conditions. To many of the points named it is apparent that the tonnage is considerably less than to Sioux City. The comparisons are therefore unconvincing. The rate to Omaha is 1 cent higher than to Kansas City. The short-line distance is about 200 miles greater. The rate to Sioux City is 3 cents higher than to Omaha, while the short-line distance is only about 100 miles greater. Based upon this comparison and upon a somewhat extended showing as to the jobbing competition between Sioux City and the Omaha group, the protestants have seriously urged a reduction in the present differential. It is claimed that the present adjustment unjustly discriminates against Sioux City in favor of Omaha, Lincoln, and Des Moines.

The growth of the lumber movement to Sioux City has been substantial in recent years, and the evidence indicates that the respondents' computation of 147 cars for a six months' period is too low. Protestants ask us to find from their evidence that Sioux City draws from 800 to 1,000 carloads of yellow pine per year from the south. The wide variation in these estimates is doubtless accounted for in part by the fact that the respondents, whose figures were taken in 1911-12, have not counted cars rebilled en route or those billed to certain stations which, though separately named in the tariffs, are in fact within the limits of Sioux City. On the other hand, not all of the shipments shown by the protestants were made from the territory included in the southwestern blanket. It would serve no useful purpose to make any definite finding as to the present car movement to Sioux City. The significant fact is that the jobbing business in yellow pine at that point has made such a substantial development under the present rate relationship as to negative the claim of discrimination in favor of the Omaha group. Increase in density of traffic points rather to decrease than to increase in rates, and tends to sus-

tain the reasonableness of the present rate under which the traffic has grown.

In this connection the further fact appears that an increasing tonnage of fir lumber moves to Sioux City from the far west. Under present rates the price relationship of these lumbers is close.

The respondents, while conceding that the rate to Omaha has a value for comparative purposes in considering the rate to Sioux City, urge us to determine the reasonableness of the proposed rate to Sioux City standing alone and disassociated from its adjustment with the rates to the other Missouri River cities. The reasons advanced for this are difference in average hauls and certain differences in transportation conditions. The traffic here considered moves to Sioux City through the Kansas City gateway and thence north through Omaha or Council Bluffs to destination. The relation of this movement to the movement to these intermediate points is obvious and invites rather than repels such comparisons as are afforded by the differences in average hauls. The result of such comparisons shows, as already pointed out, a moderate decrease in the earnings per ton-mile to the more distant point.

The differences in transportation conditions result from the fact that, while the lines of two of the carriers which serve the producing territory reach Omaha, no carrier originating lumber in that territory reaches Sioux City over its own rails. In consequence there is an enforced division of the earnings. Of the 147 cars above referred to, 67 moved to Sioux City over two lines, 62 over three lines, 16 over four lines, and 2 over five lines. There is undoubtedly some justification in this fact for a distinction between the movements to Omaha and to Sioux City. But this distinction has already received recognition in the proportionately higher rate, distance considered, to Sioux City, as compared with Omaha, than to Omaha as compared with Kansas City. We find no reason for giving such independent consideration of the rate to Sioux City as to take that point out of the relation in which by geographical location and commercial conditions it is naturally placed.

Having due regard for the recently considered rate of 25 cents to Omaha and for all other pertinent facts presented of record, it is our conclusion, and we therefore find, that the increased rates proposed by the suspended schedules have not been justified. An order requiring their cancellation will be entered.

No. 4322.
LARKIN COMPANY
v.
ERIE & WESTERN TRANSPORTATION COMPANY ET AL.

Submitted April 4, 1914. Decided April 30, 1915.

Previous decision in this case modified upon reargument.

J. L. O'Brian for complainant.

F. D. McKenney for Erie & Western Transportation Company.

REPORT OF THE COMMISSION ON REARGUMENT.

BY THE COMMISSION:

In our original report in this case, 24 I. C. C., 645, we awarded complainant reparation in the amount of 40 cents for damage sustained in connection with a shipment of two boxes of drugs and one boxed wooden pedestal from Buffalo, N. Y., to Eau Claire, Wis. The pedestal had been lost through defendants' negligence, and to carry out a contract with a purchaser, complainant had shipped another pedestal to replace the lost one. This second shipment weighed only 26 pounds, and the charges collected amounted to 56 cents, the minimum charge provided by the tariff. The first shipment aggregated about 200 pounds and was not within the minimum charge rule, and the charges on the pedestal, based on its actual weight, amounted to only 16 cents, 40 cents less than the charge on the pedestal shipped to replace it. These charges were collected, although the pedestal was not delivered. Defendants admitted their liability for the loss of the pedestal and offered to pay complainant its value, which was \$3, and to refund the 16 cents freight charges paid. Complainant declined the offer, demanding 40 cents additional, excess of freight charges on the second shipment over and above those collected on the pedestal in the first shipment. We said in our report that by the terms of the bill of lading under which the original shipment was made settlement in case of loss en route was to be based upon the value of the articles, plus the freight if already paid. There was no tariff authority for settlement on the basis sought by complainant. Defendants contended that the claim was merely one for loss and damage over which the Commission had no jurisdiction. We were of opinion and held, however, that the ques-

tion was within our jurisdiction, and in view of the terms of the bill of lading as stated, found that the rules, regulations, and practices of defendants were unreasonable, unjust, discriminatory, and unlawful, and that complainant was damaged to the extent claimed and entitled to reparation. We suggested, as a way of removing the difficulty, that a tariff rule be published to provide that where such an article was lost by the carrier transportation would be given to a second article of the same kind to take the place of the first one without additional charges, and stated that defendant Erie & Western Transportation Company had already amended its tariff by incorporating a provision similar to that suggested. However, no order for the future was entered.

On January 30, 1914, complainant filed a petition asking that the case be reopened for further argument, with a view to additional relief from unforeseen difficulties which had arisen. The petition was granted and reargument had, and the case is now before us for final disposition.

Complainant now finds itself in a worse position than before, because while formerly it was the universal practice of carriers to settle these claims as integral parts of loss and damage claims, some of them now refuse to do so. Complainant points out that this proceeding was originally instituted only because the Pennsylvania lines and a few other carriers finally questioned the propriety of settlement on that basis in view of the provisions contained in section 3 of the uniform bill of lading, reading as follows:

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid), at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

These carriers were of opinion that the above provision might or should be construed as fixing the measure of and limiting the amount of damage absolutely, that is, according to the value of the property lost, plus the freight charges if paid, and that therefore claimants for loss or damage were not at liberty to include as damages the added cost of transporting a new shipment to take the place of the lost portion of the old one. Defendants, and apparently carriers generally, admitted and still admit the justice and equity of complainant's claims, but in view of the bill of lading provision above quoted, and our previous decision in this case, have taken the position that they can not lawfully pay such claims unless a tariff rule is in effect at the time shipment moves authorizing the allowance.

They have informed complainant that it is now necessary, before any claims can be paid, for the Commission to grant specific authority in each and every case which arose prior to the date of publication of a tariff rule. Complainant calls attention to the fact that tariffs providing for the free carriage of duplicate shipments are useless unless concurred in by all roads over which the shipments move. It points out that these tariffs when filed have no retroactive force, and even if concurred in by all of the connecting roads they could have no bearing upon the claims which have already accrued. Complainant ships over nearly all the railroads in the country, and the comparatively few tariffs already filed afford no substantial relief. It is stated that as the matter now stands complainant would be obliged to bring separately to the Commission its thousands of outstanding claims against carriers in all parts of the country, amounting in the aggregate to a very large sum, and that the work of preparing these claims for submission to the Commission would require a great amount of labor and much expense. Further, that since the Commission can award reparation only on claims filed within two years from the time the cause of action accrued, numerous claims now outstanding would be barred.

What complainant suggests and now asks us to do is that we make it clear that it was not our intention, in pointing out the tariff rule as a solution of the difficulty for the future, to interfere with the settlement of these claims as integral parts of loss and damage claims, and thus allow the carriers to make settlement of all such claims without specific authority in each case from the Commission, and without reference to the period of limitation contained in the act.

In view of the conclusions herein reached we shall not refer to that matter except to say that in our opinion it is desirable that carriers should keep transportation charges and claims for the loss of or damage to property in transit entirely distinct and separate, and we feel that, as a matter of sound principle, practical application, and clearer understanding, carriers ought to provide by appropriate rule that where an article forming part of a shipment is lost in transit and the charges on that article as a part of the shipment are less than the minimum charge on the article if shipped alone, carriers should collect charges on the full shipment and should transport a like article from the same consignor at the same point of origin to the same consignee at the point of destination free of charge.

We find that our first report contained a misstatement, and as our conclusion was affected thereby, we shall now dispose of the issues involved in the light of our present knowledge. We said that the shipper must accept the uniform bill of lading or his shipment will not be received, and held that so far as the bill of lading establishes a rule,

regulation, or practice of transportation which to every intent is obligatory upon the shipper, we have jurisdiction over its provisions. The provisions of the bill of lading were at the time of complainant's shipment and are now included in the defendant's tariffs, but the acceptance of the bill of lading by the shipper is not obligatory. It is optional, as under the tariffs published by the defendants and many other carriers the shipper has the choice of the rate conditioned upon the acceptance of the provisions of the bill of lading. He may elect not to accept the terms and provisions of the bill of lading, in which event the property will be carried subject to the common-law liability, and the rate charged therefor will be 10 per cent higher than the rate charged for property shipped subject to the terms and conditions of the bill of lading. In this case the shipper elected to accept the bill of lading, which must be considered as an acceptance of its conditions. The rate predicated upon those conditions was applied.

The provision of the bill of lading referred to fixes the amount for which any carrier shall be liable as the invoice value of the property at the place and time of shipment plus freight charges if paid. To that extent it changes the common-law rule, which makes the carrier liable for the value of the property at the place of destination and for actual damages sustained. That the rigor of the common-law liability may be modified by the carrier through any fair, reasonable, and just agreement with the shipper is well established. *Cau v. T. & P. Ry. Co.*, 194 U. S., 427; *Adams Express Co. v. Croninger*, 226 U. S., 491; *Kansas City Southern Ry. Co. v. Carl*, 227 U. S., 639; *Coleman v. N. Y., N. H. & H. R. R. Co.*, 215 Mass., 45. The validity and reasonableness of the provision was considered by us in *Shaffer v. C., R. I. & P. Ry. Co.*, 21 I. C. C., 8. That case concerned the value of a car of wheat which had been misdelivered. The carrier offered to pay the invoice value of the wheat at the place and time of shipment. The complainant declined settlement on that basis and sought reparation for an amount equal to the market value of a similar quantity of wheat at the place of destination. After careful consideration we held that the provision assailed was not shown to have operated in an unreasonable and unlawful manner in connection with complainant's shipment, and dismissed the complaint. In *the Matter of Bills of Lading*, 29 I. C. C., 417, however, which concerned bills of lading provisions providing that claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after the delivery of the property, we found that the provisions referred to had been more or less disregarded by most or all of the carriers even after the provisions had become a part of their tariff schedules, and that the observance and enforcement of the limitations of the bill of lading provisions in some cases and the

waiver or disregard of them in others resulted in widespread and serious discrimination against the shippers affected.

Until a short time before our first report was issued defendants had not observed the provision involved relative to freight charges on shipments made to replace previous shipments lost, and it is now disregarded by some of the carriers over which complainant ships while others enforce it. In the light of all the circumstances now disclosed we have reached a different conclusion than that expressed in our first report. We now find that the bill of lading provision has not itself operated in an unreasonable and unlawful manner with respect to complainant's shipment, but that the absence of uniformity on the part of carriers generally in its application, its disregard by defendants up to a certain date, its arbitrary enforcement by defendants after that date, and the continued disregard of the provision by other carriers over which the complainant ships has resulted in an unreasonable, unjust, unlawful, and discriminatory practice.

Defendants as well as other carriers seem to have no disposition to impede the proper settlement of complainant's claims, but believe that the publication in their tariffs of free movement of a shipment made to replace a previous shipment which has been lost affords the proper solution of the difficulty. This solution of the difficulty would be proper as a remedy for the future, but it would leave uncorrected unjust and widespread discriminations which have already resulted.

To prevent that result and for other reasons indicated, we feel that the issues involved in this case should be disposed of in the same manner as were the issues involved *In the Matter of Bills of Lading, supra*. Defendants and other carriers should adjust all pending claims of the character involved herein upon their merits and without discrimination with respect to the bill of lading provision quoted, and also all such claims as may be presented to defendants and other carriers on or before July 1, 1915.

During the pendency of this proceeding a law known as the Cummins amendment to section 20 of the act to regulate commerce has been passed by Congress. This law may influence the future course of carriers with respect to the bill of lading provision involved herein. The extent of its influence is a matter that need not be commented upon at this time. We are concerned now with the question of disposing of this complaint upon the record before us, and we have suggested a solution of the difficulty that should remove the discrimination complained of.

The Commission feels that as a matter of justice and sound principle all carriers using a bill of lading with this provision should publish tariffs on or before July 1, 1915, providing for the free move-

ment of a shipment weighing 100 pounds or less when it is made to replace a part of a previous shipment which has been lost and upon which, as a part of a shipment, the charges would be less than if it were shipped alone.

The order for reparation previously entered will be vacated and set aside, and the case held open for the entry of such further order or orders as may be found necessary.

84 I. C. C.



No. 6963.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF IOWA

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 348
AND 649.

Submitted October 1, 1914. Decided April 26, 1915.

1. Rates on cedar shingles from points in Oregon, Washington, Idaho, and Montana to points in Iowa found to be unjustly discriminatory.
2. Fourth section applications seeking authority to charge lower rates on cedar shingles from points in Oregon, Washington, Idaho, and Montana to Chicago, Ill., and St. Louis, Mo., than to intermediate points, denied.

J. H. Henderson, D. N. Lewis, Thomas Walters, jr., and E. G. Wylie for complainant.

Charles Donnelly for defendants.

W. S. Howell for Chicago, Milwaukee & St. Paul Railway Company.

C. C. Wright and George E. Hise for Chicago & North Western Railway Company.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

F. S. Hollands for Chicago Great Western Railroad Company.

Fred G. Wright for Missouri Pacific Railway Company.

M. A. Patterson for Chicago, Rock Island & Pacific Railway Company.

84 I. C. C.

H. H. Holcomb for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Board of Railroad Commissioners of the State of Iowa here complain of the rates on cedar shingles from north Pacific coast points and other shipping points in the states of Oregon, Washington, Idaho, and Montana to stations in the state of Iowa. It is alleged that these rates are unreasonable and unjustly discriminatory, in violation of section 4 of the act to regulate commerce. The gravamen of the complaint is that the rates on cedar shingles to points in the state of Iowa are higher than to Chicago or St. Louis, to one or both of which points many of the Iowa stations involved are intermediate. The rate from Seattle, Wash., a representative point of origin, to Chicago and St. Louis, for example, is 65 cents per 100 pounds, while the rate to a majority of the points in the state of Iowa is 67 cents, and to a large number of points in the southeastern section of Iowa, 68 cents. The rates from the interior points to the destinations here involved, as well as to Chicago and St. Louis, are generally 3 cents lower than from Seattle. Portions of Fourth Section Application No. 348, filed by R. H. Countiss, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 959, and Fourth Section Application No. 649, of the Chicago, Milwaukee & Puget Sound Railway Company, relating to this traffic, were heard with the complaint.

Complainant urges that cedar shingles in carloads are analogous to cedar lumber, and that the rates on cedar lumber to the Iowa points involved are the same as to Chicago; that the long-and-short haul rule of the fourth section is observed upon cedar lumber in carloads, but not upon shingles cut from the same log moving from and to the same points. It is also urged, and not denied, that the rates from the north Pacific coast to the same destinations on classes and all other commodities conform to the requirements of the fourth section, and that cedar shingles are the only commodity upon which the long-and-short-haul rule is not observed.

Cedar shingles move from Seattle to points along the Missouri River, such as Sioux City, Omaha, and Kansas City, at a rate of 60 cents per 100 pounds. The distances to these points are 1,740 miles to Sioux City, 1,892 miles to Omaha, and 2,093 miles to Kansas City. These rates to the Missouri River points named are the rates authorized in *Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. R. Co.*, 14 I. C. C., 1. The rate from Seattle to Minneapolis and St. Paul, the twin cities, and to Duluth is 55 cents. The carriers operating lines from Duluth to Chicago publish a 10-cent proportional rate on cedar shingles

from Duluth to Chicago applicable on business from the Pacific coast, but inapplicable to intermediate points between Duluth and Chicago, which points take rates from 1 to 3 cents higher. This practice and relation of rates as between Chicago and intermediate points is defended on the ground of water competition on the great lakes between Duluth and Chicago. The carriers operating routes from the twin cities to Chicago also publish a 10-cent proportional rate to Chicago, inapplicable to intermediate points, which they defend on the ground of competition over routes through Duluth. The rate to Chicago through Missouri River gateways is the same as through Duluth or the twin cities, and the same degree of discrimination against intermediate points exists over all of the routes described.

Application No. 76, of the Chicago & North Western Railway Company, asked authority to continue lower proportional rates on shingles from the twin cities and Council Bluffs, Iowa, to Chicago on business coming from Montana, Idaho, Washington, Oregon, Alberta, Canada, and British Columbia, Canada, than the rates concurrently applicable on like traffic to intermediate points. The testimony offered in connection with the application, showing that the rate by way of Duluth was controlling, and that the 10-cent proportional rate to Chicago from both Duluth and the twin cities was relatively low, indicated that the disparity between the rates to Chicago and to intermediate points was not unreasonable, considering the proportional apart from any through rate. Fourth Section Order No. 1467 was issued authorizing the Chicago & North Western Railway to continue to publish such proportional rates on cedar shingles from the twin cities and Council Bluffs, Iowa, to Chicago as were necessary to equalize the through rates by way of Duluth and to continue higher rates to intermediate points, provided the existing rates to intermediate points were not exceeded. In view of the conclusions reached in the instant case this order will, in due time, have further consideration.

The direct routes from the shingle-producing points involved to Chicago are through the twin cities, and if the carriers are authorized to carry higher rates to intermediate Wisconsin and Illinois points than to Chicago over these routes, similar relief should be afforded in connection with the routes through Missouri River points. We are dealing, however, with the through rates from points of origin to points of destination, and not with factors of the through rates, and relief from the provisions of the fourth section should be given in situations of the kind disclosed only where the evidence is clear that the lower rate to the more distant point is actually required by conditions at that point beyond the control of the petitioning carriers and that the rate required is actually subnormal.

The history of these shingle rates shows that prior to 1907 the rate from Pacific coast terminals to points along the Missouri River, the Mississippi River, and to Chicago was 60 cents per 100 pounds. During that year the carriers filed tariffs increasing the rate to 70 cents. Several complaints were filed upon which we held, after full hearing and investigation, that some increases in the rates to points east of the Missouri River were justified. We restrained the carriers, however, from continuing any rate on this commodity from Pacific coast terminals to Chicago and Mississippi River points that should exceed the former rates by more than 5 cents per 100 pounds. *Oregon & Washington Lumber Mfrs. Asso. v. N. P. Ry. Co., supra; Pacific Coast Lumber Mfrs. Asso. v. U. P. Ry. Co., 14 I. C. C., 23.* It does not appear to have been urged at that time by these petitioners that any particular necessity existed for the maintenance of lower rates to Chicago than to other points intermediate to Chicago. In *Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. R. Co., supra*, we held as follows:

We are of the opinion that upon the entire record in this case the rates on lumber, shingles, and other forest products which were in effect immediately prior to November 1, 1907, from points in Oregon, Washington, Idaho, Montana, and British Columbia to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding points to which rates are prescribed by the Commission in cases Nos. 1054 and 1331, and observing the differentials prescribed by the Commission in case No. 1348, were and are just and reasonable, and should be restored.

The rates from said points of origin to points east of the line above mentioned, excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., which were in effect on October 31, 1907, might reasonably be somewhat increased. Such increase should not, however, in any case exceed the rates in effect immediately prior to November 1, 1907, by more than 5 cents per 100 pounds, under the present minimum weight regulations, and must be in conformity with the differentials prescribed by the Commission in case No. 1348. The rates to points in Minnesota east of the line mentioned should be graded up from that line so as to reach the maximum increase at Minneapolis, St. Paul, Minnesota Transfer, and Duluth. The rates from the Missouri River crossings should be graded up, and the maximum increase of 5 cents should be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis and points taking the same rates should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

This conclusion relative to the rates to the entire territory involved was reached on the ground of reasonableness, after due consideration of the distances involved, the loading, the car-mile and ton-mile earnings, the volume of traffic, etc.

We find in this case that the carriers have not shown any necessity for the maintenance of a lower rate to Chicago than to intermediate points, or that the rate to Chicago is materially, if any, lower than a reasonable and fairly remunerative rate. The applications above named asking relief from the fourth section as to this traffic will be denied. The rate of 65 cents to St. Louis is maintained in order to keep that point on a parity with Chicago as a gateway to central freight association territory. Denial of relief as to Chicago removes whatever necessity now exists for maintaining lower rates to St. Louis than to intermediate points and relief as to this traffic will be denied also. What has been said above respecting rates from Pacific coast terminals applies with equal force to the rates from the other points of origin named in the complaint. A fourth section order will be issued denying relief from the fourth section as to rates on shingles from all of the points of origin involved herein to Chicago, St. Louis, and intermediate points and requiring the removal of the discriminations found to exist. We further find upon the facts of record that the maintenance of rates on cedar shingles to Iowa points not intermediate to Chicago or St. Louis higher than those concurrently in effect to Chicago and St. Louis is unjustly discriminatory, and an order will be issued requiring the establishment of rates to all these points no higher than the rates contemporaneously maintained to Chicago and St. Louis.

34 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP LINE CASE.

Submitted July 20, 1914. Decided April 27, 1915.

Joint rates on hardwood lumber from mills located on Louisiana & Pine Bluff Railway at Huttig, Ark., in excess of the rates on the same commodity from the station at Huttig on the rails of the St. Louis, Iron Mountain & Southern Railway held to be unreasonable and discriminatory. Reparation awarded.

S. D. Snow for Wisconsin Lumber Company.

L. M. Walter and *R. F. Britton* for Louisiana & Pine Bluff Railway Company.

F. G. Wright, *C. C. P. Rausch*, and *E. H. Calef* for St. Louis, Iron Mountain & Southern Railway Company.

THIRD SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This supplemental proceeding involves an alleged discrimination in the existing rates on hardwood lumber moving to the general markets of consumption from the mill of the Wisconsin Lumber Company at Huttig, in the state of Arkansas. The mill is on the rails of the Louisiana & Pine Bluff Railway, one of the tap lines described in our supplemental report in this case, 23 I. C. C., 549, 583.

In that report we found that the Louisiana & Pine Bluff, with respect to certain traffic, did not perform a service of transportation and could not lawfully receive divisions from the St. Louis, Iron Mountain & Southern Railway out of the interstate rates. Its through rates with the Iron Mountain were thereupon canceled by the latter as of April 30, 1912. Thereafter the Louisiana & Pine Bluff assessed a local charge of 3 cents per 100 pounds for switching the product of the complainant's mill to the Iron Mountain, a distance of but a few hundred feet to one connection and of less than 3 miles to another connection at Dollar Junction. In its complaint against both the tap line and its trunk line connection, the Wisconsin Lumber Company alleges that the charge on interstate shipments of hardwood lumber resulting from the combination of local rates to and from the junction is unreasonable and unjustly discriminatory, and also that it works an unlawful preference in favor of other hardwood lumber producers in the same general territory. Reparation is asked.

The land upon which the complainant's mill is located is leased from the Frost-Johnson Lumber Company, which controls and practically owns the Louisiana & Pine Bluff Railway Company. The lumber company also controls, through its subsidiary, the Union Saw Mill Company, a large yellow-pine mill at Huttig. That mill, like the complainant's mill, is contiguous to the rails of the Iron Mountain; but the switch track leading to the mill of the Wisconsin Lumber Company is owned and operated by the Louisiana & Pine Bluff Railway Company.

Under a subsequent order, entered in connection with the second supplemental report herein, 31 I. C. C., 490, which was announced in conformity with the rulings of the Supreme Court of the United States in *The Tap Line cases*, 234 U. S., 1, the trunk lines were required to reopen through routes and to publish joint rates with the tap lines to interstate destinations. On the basis of the maximum allowances fixed in that order the Louisiana & Pine Bluff may be paid \$2 a car for the switching service from the mills at Huttig to the Iron Mountain connection at that point, and \$3 for switching a car to the connection at Dollar Junction. These allowances were made applicable to all interstate shipments of lumber and forest products moving from May 1, 1912, to the effective date of the rates and divisions established in compliance with the order.

Without going into the details of the various rate readjustments that have been made, it will suffice to say that at the time of the hearing the rates on hardwood lumber from the mill of the Wisconsin Lumber Company, on the rails of the Louisiana & Pine Bluff at Huttig, were 3 cents higher than the rates on hardwood lumber originating on the rails of the Iron Mountain at Huttig. In tariffs issued subsequent to the hearing the Iron Mountain named rates on hardwood from the mill of the Wisconsin Lumber Company on the rails of the Louisiana & Pine Bluff at Huttig $1\frac{1}{2}$ cents higher than the rates on hardwood originating on its own rails at Huttig, while the rates on pine lumber from the mill of the Union Saw Mill Company at Huttig, which is owned by the interests that own the Louisiana & Pine Bluff Railway, were the same as the rates on pine lumber originating on the Iron Mountain's own rails at Huttig. The higher rates charged on hardwood lumber were made by the addition of an arbitrary of $1\frac{1}{2}$ cents to the Iron Mountain rates from Huttig, and this arbitrary, together with a division of $1\frac{1}{2}$ cents out of the Iron Mountain rate, accrues to the Louisiana & Pine Bluff. The rate on the products of the complainant's mill was thus advanced, while the products of the proprietary mill at the same point move out upon the trunk line rate from the junction. Under the orders heretofore entered in this proceeding the proprietary company, through

its tap line, can not properly receive any allowance in excess of \$2 or \$3 a car from the Iron Mountain, nevertheless on the products of the complainant's mill the tap line earnings aggregate 3 cents per 100 pounds.

At the time of the hearing the rates on hardwood lumber were about 3 cents lower than the rates on pine lumber, but the rates on both commodities were grouped in the general territory in which Huttig is located, the group rate on pine extending, however, over a much larger territory than the group rate on hardwood. In later tariff issues it is shown that the excess of the pine rates over the hardwood rates at Huttig is only 1 cent per 100 pounds. But it is manifest that the order hereinbefore mentioned, in which we fixed the maximum allowances to the Louisiana & Pine Bluff for switching the products of the mills at Huttig to its junctions with the Iron Mountain, contemplated the extension back to those mills, as of May 1, 1912, of the junction rates on both hardwood and pine. In the case of one or two tap lines in the state of Arkansas, we have permitted the addition of an arbitrary to the trunk line rates, but in such cases the arbitrary is applied at stations more or less distant from the junction, and is for a substantial haul by the tap line; but in no case have we permitted the addition of an arbitrary for a switching service within the limits of the distances for which we fixed maximum allowances of \$2 and \$3 a car.

Much is said on the record about a contract, having relation to the rates complained of, that was previously entered into between the Wisconsin Lumber Company and the interests that control the Louisiana & Pine Bluff Railway Company. But, as has been said in several cases, this Commission has no power to enforce contractual arrangements respecting the rates and practices of carriers. As the Louisiana & Pine Bluff has claimed and been accorded the status of a common carrier, its rates and practices are subject to all the tests and control to which other carriers must submit under the law, notwithstanding the terms of any such agreement. Upon the whole record we therefore conclude and find that the published interstate rates on hardwood lumber applying from the mill of the complainant are and for the future will be unreasonable and unjustly discriminatory, in so far as they exceed the rates contemporaneously maintained on hardwood lumber originating on the rails of the St. Louis, Iron Mountain & Southern Railway Company at Huttig. We also conclude and find that the complainant has been unlawfully damaged by the Iron Mountain and the Louisiana & Pine Bluff to the extent that the through charges assessed on the products of its mill moving since May 1, 1912, have exceeded the junction point rate on hardwood.

The amount of reparation due to the complainant can not be determined on this record. When the rates shall have been read-

justed in accordance with our findings herein, and a statement duly checked and certified to by the Iron Mountain, shall have been filed showing the shipments made by the complainant, an order will be entered awarding reparation as indicated. The order now to be entered will require the establishment and maintenance by the defendants of such through rates on hardwood lumber to interstate destinations, when originating on the rails of the Louisiana & Pine Bluff Railway Company at Huttig, as shall not exceed the published rates on the St. Louis, Iron Mountain & Southern Railway Company on the same commodity when originating on its own rails at that point.

34 I. C. C.

No. 6829.
BALLOU & WRIGHT
v.
**NEW YORK, NEW HAVEN & HARTFORD RAILROAD COM-
PANY ET AL.**

Submitted September 21, 1914. Decided April 12, 1915.

1. Rates charged for the transportation of motorcycles in carloads from Armory, Mass., to Portland, Oreg., and Seattle, Wash., found to have been unreasonable to the extent that they exceeded the first-class rates contemporaneously in effect. Reparation awarded.
2. Where a shipper has paid an excessive rate he may recover as reparation the difference between the rate paid and what would have been a reasonable rate at the time, even though the freight charges were added to the selling price of the article transported.

F. M. Lombard for complainant.

A. W. Hawkins for Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon-Washington Railroad & Navigation Company; and Chicago, Rock Island & Pacific Railway Company.

C. A. Hart for Spokane, Portland & Seattle Railway Company; Northern Pacific Railway Company; and Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale motorcycle business at Portland, Oreg. By complaint, filed April 20, 1914, it alleges that the rates charged by defendants for the transportation of 19 carload shipments of motorcycles from Armory, Mass., to Portland, Oreg., and Seattle, Wash., between May 17, 1912, and July 11, 1913, were unreasonable. The establishment of reasonable rates is asked and reparation to the extent that the commodity rates applied to the respective shipments exceeded the first-class rates contemporaneously in effect. The claim for reparation on the shipments involved, which moved July 2 and July 11, 1913, was withdrawn at the hearing, as refund had been made by defendants because of an alternative tariff provision effective June 30, 1913, allowing the application of class rates lower than commodity rates on the same traffic.

Five of the remaining 17 shipments moved lake and rail, 12 all rail. Charges were collected at a commodity rate of \$4 per 100 pounds on the all-rail shipments, and at a commodity rate of \$3.77 per 100 pounds on the lake-and-rail shipments, except the first shipment, which moved May 17, 1912, on which a rate of \$4 was charged, although the \$3.77 lake-and-rail rate was the lawful rate. That shipment was therefore overcharged. The first-class rates in effect during the period of movement of all of the shipments but the first were \$3.70 per 100 pounds all rail and \$3.47 per 100 pounds lake and rail. The first-class lake-and-rail rate in effect when the first shipment moved was \$2.77 per 100 pounds.

The case is similar to *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, Docket No. 5616, in which the rates applied on similar shipments were found unreasonable and reparation was awarded. A copy of the transcript of testimony in that case was introduced in evidence in this proceeding, with certain additional evidence adduced to establish the fact of the shipments here involved. The single question contested is complainant's right to reparation, defendants showing that complainant added an arbitrary sum of \$15 to the sale price of each motorcycle to cover freight and local drayage charges, from which they argue that complainant suffered no damage and therefore is not entitled to reparation. This question is concluded by *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C., 668, affirmed in *Michigan Hardwood Mfrs. Asso. v. Freight Bureau*, 27 I. C. C., 32, in which we said:

These complainants were shippers of hardwood lumber to this destination and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay. If complainants were obliged to follow every transaction to its ultimate result and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify giving them.

Carriers can not be heard to say that reparation for the exaction of unreasonable freight rates should be denied because the shipper or consignee from whom the same has been collected has on that account secured a higher price for the commodity from his purchaser.

Upon all of the facts disclosed we find that the rates charged were unreasonable to the extent that they exceeded the first-class rates concurrently in effect on like traffic and, following our holding in the *Burgess case, supra*, that complainant has been damaged to the extent of the difference between the amounts paid and the amounts which would have accrued at the first-class rates concurrently in effect had they been applicable, and is entitled to reparation with interest.

Complainant should prepare a statement showing as to each shipment on which reparation is claimed the date of movement, point of origin, point of destination, route, weight, car number and initials, rate applied, charges collected, and the amount of reparation due under our findings herein, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared by complainant and verified by defendants, we will consider the matter further with a view to issuing an order awarding reparation.

Inasmuch as motorcycles are now rated first class in the western classification, no order for the future is deemed necessary.

No. 7409.

REEVES COAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted January 16, 1915. Decided May 3, 1915.

Complainant ordered a shipment reconsigned, provided the lowest rate between original point of origin and final point of destination would apply. Reconsignment was effected and lawful charges, higher than those which would have accrued at the lowest rate from point of origin to final destination, were collected; *Held*, That the case does not differ materially from one involving merely a misquoted rate. Complaint dismissed.

S. B. Houck for complainant.

O. A. Lahey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal business at Minneapolis, Minn. By complaint, filed October 7, 1914, it alleges that unlawful charges were collected by defendant upon a carload of coal shipped May 28, 1913, from Roosevelt, Tenn., to Dell Rapids, S. Dak., and reconsigned from Dell Rapids to Sioux Falls, S. Dak. Reparation is asked.

The shipment moved to Dell Rapids at a rate of \$4.35 per ton, composed of a rate of \$1.90 per ton from Roosevelt to Milwaukee, Wis., and a rate of \$2.45 from Milwaukee to Dell Rapids. The con-

signee at Dell Rapids refused to accept the shipment, and after it had remained at Dell Rapids until \$24 demurrage had accrued complainant arranged to dispose of it at Sioux Falls, S. Dak. Defendant was instructed to transport the car to Sioux Falls with notice in the reconsigning order as follows:

Notice.—If this freight can not move from original point of shipment to above destination on the lowest published rate between these stations, do not apply this order, but notify us at once and hold for other disposition.

The shipment had passed through Sioux Falls en route to Dell Rapids. The rate from Roosevelt to Sioux Falls was \$4.30 per ton, 5 cents per ton less than the rate to Dell Rapids. Complainant had been advised by defendant's agent before giving the reconsigning order that the \$4.30 rate to Sioux Falls would be protected. Under the tariffs lawfully in effect at the time, however, this could not be done, and defendant acknowledges that it was in error in so advising complainant. Despite the condition in complainant's order defendant transported the shipment to Sioux Falls, where presumably it was accepted in due course by the consignee. Charges were collected for the movement at the local rate of 4½ cents per 100 pounds.

Complainant's sole contention is that defendant should have asked complainant for further instructions in accordance with the provisions of the reconsigning order, and that in handling the shipment as it did defendant acted without authority and should, therefore, be compelled to refund the charges collected for the transportation from Dell Rapids to Sioux Falls. It is our view, however, that the case does not differ materially from one involving merely a misquoted rate. Following *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418, the complaint will be dismissed.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 554.
MIXED CARLOAD SHIPMENTS OF LIME, CEMENT, AND
PLASTER FROM INTERSTATE TO ARKANSAS POINTS.

Submitted January 30, 1915. Decided May 10, 1915.

Proposed withdrawal of tariff provision under which mixed carloads of lime, cement, and plaster are shipped "from interstate to Arkansas points" found not to be justified. Tariff withdrawing the provision ordered to be canceled, and carriers required to name such provision by other tariffs, upon the basis of the highest rated commodity contained in the mixture.

F. B. Clark for St. Louis, Iron Mountain & Southern Railway Company.

G. E. Schnitzer for Chicago, Rock Island & Pacific Railway Company.

F. R. Thomas for protestants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The tariff provision under investigation in this proceeding is contained in supplement No. 3 to F. A. Leland, agent, I. C. C. No. 1064, Eugene Morris, agent, I. C. C. No. 508. It proposes to cancel, effective November 30, 1914, item 1098 in Leland's I. C. C. No. 958, Eugene Morris's I. C. C. No. 361, which reads as follows:

Lime, cement, and plaster, in mixed carloads, will be handled at the highest rate and minimum weight applicable from interstate to Arkansas points.

This rule has been carried in the respondents' tariffs since 1909.

The Commission, by order dated November 25, 1914, suspended the operation of the proposed provision until March 30, 1915, and by supplemental order, dated February 15, 1915, continued the suspension until September 30, 1915.

Although the proposed cancellation would affect all shippers who desire to ship mixed carloads of these commodities from interstate points to Arkansas, the Memphis, Tenn., shippers are the only protestants of record. The carriers made practically no attempt to justify the cancellation. Some reference was made in the testimony to the alleged unremunerative character of transportation rates in the state of Arkansas, but no evidence was offered bearing upon the reasonableness *per se* of the rates upon any of the commodities involved in this proceeding. It was stated by the representative of the carriers at the hearing that "the carriers would have no objection to

considering the proposition of carrying such a mixture by the publication of specific rates," but that for the transportation of such a mixture higher rates would be required than those in effect on any of the commodities in straight carload lots. In view of this position, it is not clear why the carriers have attempted to withdraw the mixing provision instead of proposing specific rates upon mixed carloads. The practice of shipping mixed carloads of lime and cement is very general throughout the United States, although not as common in western classification territory as elsewhere. The Commission has previously pointed out the desirability of liberal provision for mixtures. In the *Western Classification case*, 25 I. C. C., 442, at 471-472, we said:

In many former proceedings our attention has been forcefully directed to expensive terminals which carriers are obliged to maintain, especially in large cities. A great proportion of such terminal properties is devoted to freight service. Great warehouses and correspondingly expensive loading platforms and accessory facilities are given up to less-than-carload shipments. Every consolidation of these individual packages, or groups of packages, into carload quantities saves not only storage and handling facilities, but also car space. The latter is especially important during times of car shortage. * * * A liberalization of mixtures in the classification and the resulting consolidation of small shipments into carload lots will tend directly to a better utilization of car space and the saving of investments in railway terminals and their operation.

The benefits to shipper and consignee are obvious. Orders may be made for smaller quantities of each commodity and the service contributed by them in loading and unloading obviates the expense of handling by the carrier which is involved in less-than-carload shipments, as well as the greater inconvenience of warehouse delivery as compared with track delivery.

Most shipments to points in Arkansas are to small places and small dealers.

The testimony shows that the proposed cancellation would result in hardship and loss to protestants by compelling them to ship in straight carloads or pay the less-than-carload rates on smaller shipments. In the latter case the shippers between points in Arkansas would have an advantage over their interstate competitors because there the spread between carload and less-than-carload rates is less in intrastate rates than in interstate rates.

It is the view of the Commission that the practice of mixing carload shipments of lime, cement, and plaster should be continued and that suitable tariff provision therefor should be made by the respondents.

While there is not sufficient evidence in this record upon which to base a satisfactory conclusion as to what would be just and reasonable rates upon these commodities destined to points in Arkansas, some consideration may be given to the relation that should be observed

between straight and mixed carload rates. In arriving at such a basis it is proper to give due regard to the nature and cost of the special service furnished. Under the prevailing practice, it is the rule, in the absence of a specific rate upon the mixed shipment, to apply the highest rate and highest minimum weight applicable on any of the commodities contained in the shipment. This record gives instances of specific rates on mixed carloads of lime and cement from St. Louis, Chicago, and Memphis to Texas common points which are considerably higher than the rates on either commodity in straight carloads. In those instances, however, the rates on the several commodities are the same. Where, as in this case, there is a substantial difference between the rates on the several commodities, the application of the highest rate and highest minimum weight certainly permits the carrier to secure the additional compensation which the conditions attending the transportation of mixed shipments appear to warrant.

The carriers claim that inasmuch as the rule authorizing mixed carload shipments is carried as an exception to western classification, the rates to which it refers are class rates and the highest class rate must be applied to such shipments. Commodity rates had been established by the carriers on the commodities included in the mixture, and it developed at the hearing that for several years the Memphis shippers had been shipping mixed carloads of these commodities at the highest commodity rate and the carriers had been collecting charges on that basis without raising any question as to their correctness. The commodity rates were carried in Southwestern Lines tariff No. 45-K, F. A. Leland, agent, I. C. C. No. 1058, Eugene Morris, agent, I. C. C. No. 502, in which proper reference is made to the tariff carrying the exception which allows the mixing privilege. It is thus seen that, whatever the intent of the framers of the tariff, the shippers were justified in understanding that the "highest rate applicable" was the highest commodity rate.

The hearing in this case was held on January 30, 1915. On February 12, 1915, the respondents, through their agents, filed with this Commission a tariff designated as supplement No. 15 to Southwestern Lines tariff No. 45-K, which supplement contains a provision, effective March 15, 1915, canceling the commodity rates on building cement carried therein, and referring to Southwestern Lines tariff No. 90, F. A. Leland's I. C. C. No. 1075, for rates upon this commodity from all points except those in certain southeastern territories. The latter tariff, while naming commodity rates on cement which are generally the same as those previously carried in tariff No. 45-K, is not subject to the classification exception which embodies the provision governing mixing. It will thus be seen that should that provision be continued upon the basis of the rule as now carried, the status of mixed shipments would be very materially

changed, as in that case the cement rate to be used for comparison in determining the "highest rate" would be the class C rate applicable under tariff No. 45-K instead of the commodity rate named in tariff No. 90. This would increase the rates on mixed carloads of lime and cement from Memphis to points in Arkansas approximately 35 per cent. The act of the carriers in thus changing their tariffs before the Commission could consider the record in this case and render a decision therein is manifestly improper.

The respondents will be required to establish and for two years to maintain from interstate to Arkansas points rates and minimum weights applicable to mixed carloads of lime, cement, and plaster not higher than the highest commodity rate and highest minimum weight applicable to straight carloads of any of the commodities in the mixed car. It follows that all conflicting tariff provisions must be canceled.

An order will be entered accordingly.

24 I. C. C.

No. 6301 and No. 6301 (Sub-No. 1).
CITY OF CHARLOTTE, N. C., ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

No. 6651.

CITY OF ROCK HILL, S. C.,

v.

SOUTHERN RAILWAY COMPANY.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos. 1548,
1561, AND 1573.

Submitted May 7, 1914. Decided May 3, 1915.

Rates on cast-iron pipe in carloads from East Radford and Lynchburg, Va., and Anniston, Ala., to Charlotte, N. C., and Rock Hill, S. C., not found to have been unreasonable. Fourth section applications named granted in part and denied in part.

Brenizer, Black & Taylor for complainants.

R. Walton Moore, C. J. Rixey, jr., and F. W. Gwathmey, for Southern Railway Company, Norfolk & Western Railway Company, and Seaboard Air Line Railway.

E. H. Dulaney for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases were consolidated by agreement of counsel and will be considered in one report.

Complainants in Dockets Nos. 6301 and 6301 (Sub-No. 1) are the city of Charlotte, a municipal corporation of the state of North Carolina, and the Charlotte Shippers & Manufacturers Association, a voluntary organization of the business interests of Charlotte; in Docket No. 6651 the city of Rock Hill, another municipal corporation of the state of South Carolina. The complaint in No. 6301, filed October 31, 1913, alleges that the rates charged by defendants on cast-iron pipe in carloads from East Radford and Lynchburg, Va., to Charlotte are unreasonable and unjustly discriminatory, that they subject Charlotte to undue prejudice and disadvantage, and

that they violate the long-and-short-haul provision of the fourth section of the act. The complaints in No. 6301 (Sub-No. 1), filed October 24, 1913, and in No. 6651, filed February 24, 1914, allege violations of sections 1, 2, 3, and 4 of the act with respect to the rates on the same commodity from Anniston and other points in the state of Alabama to both Charlotte and Rock Hill. Reparation is asked in all three of the complaints.

Charlotte enlarged its water system in the years 1911 and 1912, and in 1913 Rock Hill increased its water supply. The improvements required great quantities of cast-iron pipe of large diameter, and appropriate contracts were made to secure the requisite quantities to be delivered at Charlotte and Rock Hill free on board cars at destination. The pipe was shipped from East Radford and Anniston, the foundry companies retaining title until the shipments were accepted at destination. The purchasing cities paid the freight bills as the pipe was received, charging the amounts paid against the foundry companies before settlement with them. The shipments from East Radford to Charlotte moved over the Norfolk & Western Railway through Lynchburg, Va., to Durham, N. C., and thence over the Seaboard Air Line Railway to Charlotte. The shipments from Anniston to both Charlotte and Rock Hill moved over the Southern Railway.

Cast-iron pipe generally moves in the territory involved at class A rates. East Radford is not one of the Virginia cities and takes a differential of 2 cents per 100 pounds over Lynchburg. The rate from Lynchburg to Charlotte is the class A rate of 18 cents per 100 pounds, or \$3.60 per net ton, applicable not only over the short line, 207 miles, but also by way of the Norfolk & Western Railway to Durham, 117 miles, and thence over the Seaboard Air Line Railway, 259 miles, to Charlotte, 376 miles in all. In *Corporation Commission of North Carolina v. N. & W. Ry. Co.*, 19 I. C. C., 303, the class A rate of 15 cents from Lynchburg to Durham was found not to be unreasonable. Prior to June 1, 1912, the rate on cast-iron pipe from East Radford to Charlotte was \$4 per net ton. Since that time it has been \$3.80. Charlotte is 473 miles from East Radford over the route of movement.

The rate from Anniston to Charlotte and Rock Hill is \$4.40 per ton, or 22 cents per 100 pounds, the same as the rate applied on cast-iron pipe from the Birmingham group and from Chattanooga to many points in the Carolinas. As applied from Birmingham to Columbia, S. C., this rate was recently before us in *Southern States Supply Co. v. S. Ry. Co.*, 31 I. C. C., 30. In that case the complainant alleged that the 22-cent rate on cast-iron pipe from Birmingham to Columbia was unreasonable and unduly prejudicial to Columbia as compared

with the rate of 15 cents per 100 pounds to South Atlantic ports such as Charleston and Savannah. We found that the rate to Columbia was not unreasonable or unduly prejudicial.

Upon all of the facts disclosed of record here we find that complainants have not shown that the rates involved are unreasonable.

FOURTH SECTION ISSUES.

The applications of the interested carriers for authority to continue lower rates from East Radford and Lynchburg, Va., to Atlanta than to Charlotte and for authority to continue lower rates on cast-iron pipe from Anniston, Ala., to the Virginia cities than to Charlotte, Rock Hill, and other intermediate points were assigned for hearing with the complaints.

The present rates from East Radford to Charlotte, Augusta, and Atlanta do not violate the fourth section of the act. A rate of \$5 per ton has been in effect from East Radford to Augusta since February 1, 1913, over all lines, while the present rate to Atlanta is so restricted as to routes that it is not applicable by way of Charlotte. The present rates from Lynchburg to Charlotte and to Augusta do not violate the fourth section by any route or line here involved. The rates from Lynchburg to Charlotte and Atlanta, \$3.60 and \$3.25 per ton, respectively, violate the long-and-short-haul rule of the fourth section over the Southern Railway, the short and direct line between the points named, but not over the route of the Norfolk & Western Railway Company and the Seaboard Air Line Railway, the other defendants named in No. 6301, as Charlotte is not intermediate to Lynchburg and Atlanta over these routes. As previously stated, the shipments from East Radford moved through Lynchburg, and all of the shipments involved in No. 6301 moved over the Norfolk & Western from Lynchburg to Durham and over the Seaboard Air Line from Durham to destination, the city of Charlotte requiring terminal delivery by the Seaboard Air Line.

Lynchburg is a representative point of origin for the routes from Virginia cities through Charlotte to Atlanta, Ga. Over the Southern Railway Charlotte is 207 miles from Lynchburg, Atlanta 475 miles. From Anniston, Ala., Charlotte is intermediate to Lynchburg over Southern Railway through Atlanta, Ga. Lynchburg is 579 miles from Anniston over this route, Charlotte 372 miles. The rates applicable are \$3.50 per net ton to Lynchburg, \$4.40 to Charlotte. Rock Hill does not appear to be intermediate to Atlanta, Ga., by any of the direct lines from the Virginia cities to Atlanta, nor intermediate to the Virginia cities by any of the most direct lines from Anniston. It would be intermediate to Lynchburg on traffic routed Southern

Railway to Atlanta, Georgia Railroad to Augusta, and Southern Railway to destination.

The following table shows the rates per net ton on cast-iron pipe from Lynchburg to Atlanta, Charlotte, and representative intermediate points north of Charlotte, with distances over the Southern Railway route from Lynchburg to Atlanta:

From Lynchburg, Va., to—	Miles.	Rate.
Greensboro, N. C.....	114	\$3. 40
High Point, N. C.....	130	3. 60
Thomasville, N. C.....	136	3. 60
Lexington, N. C.....	147	3. 60
Salisbury, N. C.....	164	3. 60
Concord, N. C.....	186	3. 60
Charlotte, N. C.....	207	3. 60
Atlanta, Ga.....	475	3. 25

This table shows that the rate to an intermediate point 114 miles south of Lynchburg is higher than the rate to Atlanta, 475 miles from Lynchburg. Taking the routes of the Southern Railway from Anniston to Lynchburg through Charlotte and through Rock Hill, the following table shows the rates per net ton to Lynchburg, Charlotte, Rock Hill, and other intermediate points south of Charlotte and Rock Hill with distances over the Southern Railway route from Anniston through Charlotte and Rock Hill to Lynchburg and over the route of the Southern Railway to Atlanta, Georgia Railroad to Augusta, and Southern beyond:

From Anniston, Ala., to—	Miles.	Rate.
Atlanta, Ga.....	104	\$1. 00
Chambler, Ga.....	118	4. 20
Buford, Ga.....	142	4. 20
Deercourt, Ga.....	208	4. 20
Madison, S. C.....	207	} 4. 40
Seneca, S. C., inclusive.....	225	
Calhoun, S. C.....	234	} 4. 60
Easley, S. C., inclusive.....	253	
Greenville, S. C.....	265	4. 40
Taylor, S. C.....	273	} 4. 60
Fair Forest, S. C., inclusive.....	291	
Spartanburg, S. C.....	296	4. 40
Converse, S. C., to Thicketty, S. C., inclusive.....	311	4. 60
Gaffney, S. C.....	317	4. 40
Blacksburg, S. C.....	325	4. 40
Grover, N. C.....	330	} 4. 60
Bessemer City, N. C., inclusive.....	343	
Gastonia, N. C.....	350	4. 40
Lowell, N. C.....	356	4. 60
Belmont, N. C.....	360	4. 60
Charlotte, N. C.....	372	4. 40
Lynchburg, Va.....	579	3. 50
Richmond, Va.....	654	3. 50
GEORGIA RAILROAD STATIONS.		
Clifton, Ga.....	108	2. 40
Covington, Ga.....	145	3. 20
Carey, Ga.....	185	3. 73½
Greensboro, Ga.....	192	3. 86½
Union Point, Ga.....	199	4. 00
Camak, Ga.....	228	4. 30
Harlem, Ga.....	250	4. 66½
Grovetown, Ga.....	260	4. 80
Wheeler, Ga.....	270	4. 93½
Augusta, Ga.....	275	4. 20

From Anniston, Ala., to—	Miles.	Rate.
SOUTHERN RAILWAY STATIONS.		
Hamburg, S. C.....	277	\$5.20
Arthur, S. C., inclusive.....	353	
Columbia, S. C.....	358	4.40
Killian, S. C.....	371	5.00
Cornwell, S. C., inclusive.....	415	
Chester, S. C.....	423	4.40
Lewis, S. C.....	430	5.20
Ogden, S. C., inclusive.....	436	
Rock Hill, S. C.....	442	4.40
Charlotte, N. C.....	467	4.40
Lynchburg, Va.....	674	3.50
Richmond, Va.....	749	3.50

This table shows that the rates to intermediate points comparatively short distances from Anniston are higher than the rates to Lynchburg, 579 miles from Anniston over the route through Charlotte and 674 miles over the route through Rock Hill.

Defendants attempt to justify the maintenance of lower rates on cast-iron pipe from the Virginia cities to Atlanta than to Charlotte and from Anniston to the Virginia cities than to Charlotte and Rock Hill on the ground of commercial competition. Cast-iron pipe is made not only at Anniston, but also at other points in the iron district of Alabama, generally referred to as the Birmingham group, and at Chattanooga and other points in southern Tennessee. Atlanta is 104 miles from Anniston, 137 miles from Chattanooga, and 166 miles from Birmingham. The rate from Anniston to Atlanta is \$1.60 per ton, as compared with \$2 per ton from Chattanooga and the Birmingham group to Atlanta. If foundries located at the Virginia cities or foundries located at eastern points and shipping through the Virginia gateways are to compete at Atlanta with pipe from Alabama and Tennessee, the rates from those points must not greatly exceed the rates just named. For many years the rate from Virginia cities to Atlanta has been \$3.25 per net ton, but even with this rate Virginia foundries and eastern foundries shipping through Virginia gateways have shipped only a small quantity of cast-iron pipe to Atlanta. Defendants similarly maintain a rate of \$3.50 per net ton from Anniston to enable Alabama foundries to compete at Virginia cities with plants located there and on the north Atlantic seacoast. Cast-iron pipe is manufactured at Camden, N. J., Reading, Pa., and other northern points, and the product of the plants located at such points can be shipped to the Virginia cities at lower rates than \$3.50. The all-rail rate from Camden to Richmond and Norfolk prior to the recent 5 per cent increase was \$2.60 per ton, while the Clyde line published a rate of \$2.60 from Camden to Richmond. At least one of the northern producers of cast-iron pipe operates its own barge line to Norfolk.

The record shows that cast-iron pipe is manufactured at Charlotte and to that extent the conditions at Charlotte are somewhat analogous to the conditions that obtain at Lynchburg. Defendants assert that the pipe manufactured at Charlotte is smaller than the pipe which constituted the shipments from Lynchburg and Anniston specified in the present complaints, but the explanation is unconvincing. The rate of \$3.25 per net ton from Lynchburg to Atlanta applies on cast-iron pipe, water, 3 inches or more in diameter, and some of the pipe manufactured at Charlotte is 3 inches in diameter. The rate of \$3.50 from Anniston, Ala., to Lynchburg applies on cast-iron pipe without qualification as to size except that different minimum weights are provided for pipe 18 inches or more in diameter and pipe less than 18 inches in diameter. The rate from Anniston to Lynchburg has been reduced, therefore, on the same kind of pipe that is manufactured at Charlotte, without reduction in the rate to Charlotte.

Defendants introduced exhibits in which they compare commodity rates from Anniston to Virginia cities and from the Virginia cities to Atlanta with rates applicable on cast-iron pipe from the same and other points for similar distances, for the most part the regular class or special iron rates. The comparisons show that the commodity rates are low. There is little doubt, moreover, that the rates on cast-iron pipe from Virginia cities and Anniston to the more distant points involved are lower than they might reasonably be but for the competitive conditions existing at such points. Defendants have not shown, however, that the higher rates to intermediate points are relatively reasonable, and upon all of the facts disclosed we find that defendants have not justified the maintenance of higher rates from Lynchburg to Charlotte and points north thereof than to Atlanta, nor the maintenance of higher rates from Anniston to Charlotte and points intermediate thereto than to the Virginia cities. Authority to continue higher rates to these points than to more distant points named will, therefore, be denied.

As stated above, the only route from Anniston, Ala., through Rock Hill to the Virginia cities is Southern Railway to Atlanta, Georgia Railroad to Augusta, and Southern Railway thence to Lynchburg. By this route Rock Hill is 442 miles from Anniston, Charlotte 467 miles. The rate to both points is \$4.40. This route is circuitous, and the carriers will be authorized to continue rates to Rock Hill and points intermediate thereto north of Augusta, Ga., higher than to the Virginia cities.

Many other fourth section departures exist over this route. A rate of \$5.20 applies, for example, to Hamburg, S. C., and Arthur, S. C., and intermediate points, while a rate of \$4.40 applies to Columbia, 5 miles north of Arthur. Points north of Columbia take a rate of \$5

up to Chester, S. C., which takes a rate of \$4.40. No justification or explanation was offered for these disparities in the rates, but because of the circuitous route the maintenance of lower rates to the Virginia cities than to Rock Hill and points on the Southern Railway north of Augusta will be permitted upon the condition that the rates to such points shall not be higher than the rates to Rock Hill. Authority to continue higher rates to Augusta, Ga., and points intermediate thereto than to Virginia cities will be denied.

There are several other routes from the Virginia cities to Atlanta and to Augusta over which Charlotte would be an intermediate point. The carriers stated, however, either that the application of the rates over such routes would be canceled or that no traffic had moved over such routes and that no relief from the fourth section was desired. These applications also, therefore, in so far as they cover rates over these routes, will be denied.

Inasmuch as complainants have not shown the rates to be unreasonable *per se* no reparation will be awarded.

The complaints will be dismissed, and an appropriate fourth section order will be entered.

84 I. C. C.

No. 7045.¹
DEWEY BROTHERS COMPANY
v.
**PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.**

Submitted December 25, 1914. Decided April 30, 1915.

Complainant assails as unreasonable and unjustly discriminatory defendants' rates for the transportation of grain and grain products from Trebein and Leesburg, Ohio, to various points in West Virginia, Kentucky, and Virginia, as compared with lower rates to Norfolk, Va., to which the destinations involved are intermediate; Held:

- 1. That the maintenance of lower rates for the transportation of grain and grain products from Trebein and Leesburg to Norfolk than to intermediate points west of and including Bluefield, W. Va., is not justified. Relief from the provisions of the fourth section of the act denied.**
- 2. That rates on grain products from Trebein and Leesburg to main-line points on the Norfolk & Western west of and including Bluefield were, and for the future will be, unreasonable to the extent that they respectively exceeded or exceed 15.4 and 14.9 cents per 100 pounds. Reparation denied.**
- 3. Rates on grain products from Trebein and Leesburg to branch-line points on the Norfolk & Western both east and west of Bluefield not shown to be unreasonable.**

O. P. Gothlin for complainant.

A. P. Burgwin for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

O. S. Lewis for Baltimore & Ohio Southwestern Railroad Company.

G. C. Van Zandt for Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases involve the rates on grain and grain products in carloads from Trebein and Leesburg, Ohio, to various destinations in West Virginia, Kentucky, and Virginia; Nos. 7045 and 7170 (Sub-No. 2), the rates from Trebein; Nos. 7170 and 7170 (Sub-No. 1), the rates from Leesburg. Dewey Brothers Company, the single complainant in all of the cases, is a corporation engaged in the grain, feed, and flour business at Blanchester, Ohio. The complaints filed in

¹The proceeding also embraces complaints in—No. 7170 and 7170 (Sub-No. 1), Same v. Baltimore & Ohio Southwestern Railroad Company et al.; No. 7170 (Sub-No. 2), Same v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company et al.; Fourth Section Applications Nos. 1561 and 2069.

June, August, and September, 1914, allege that the rates charged by defendants for the transportation of grain and grain products in carloads to the points hereinafter described were and are unreasonable, unjustly discriminatory, and in violation of the fourth section of the act to regulate commerce. Reparation is asked and the establishment of reasonable rates for the future.

Those portions of Fourth Section Applications Nos. 1561 and 2069 filed, respectively, by the Norfolk & Western Railway and J. F. Tucker, agent, which seek authority to charge rates on grain and grain products from Trebein and Leesburg to Norfolk, Va., lower than the rates contemporaneously applicable on like traffic to intermediate points on the Norfolk & Western, were set for hearing with the complaints.

Trebein is on the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, 59 miles southwest of Columbus, Ohio, and 69 miles northeast of Cincinnati, Ohio. Leesburg is on the Baltimore & Ohio Southwestern Railroad, approximately 35 miles southeast of Trebein and 34 miles west of Chillicothe, Ohio. The destination points involved are main and branch line stations on the Norfolk & Western, all but three between Kenova and Bluefield, W. Va., points on the main line of the Norfolk & Western 139 miles and 344 miles, respectively, southeast of Columbus. The shipments involved from Trebein moved over the Pittsburgh, Cincinnati, Chicago & St. Louis to either Columbus or Cincinnati, thence over the Norfolk & Western to destinations; the shipments from Leesburg, over the Baltimore & Ohio Southwestern to Chillicothe, thence over the Norfolk & Western. The Norfolk & Western lines from Cincinnati and Columbus converge at Portsmouth, Ohio, 39 miles northwest of Kenova.

The rates charged on complainant's shipments were 19½ cents per 100 pounds from Trebein; 19 cents from Leesburg, except on two shipments, constructed in accordance with the Norfolk & Western's practice of applying the Norfolk rate from central freight association territory percentage groups, with a 5-cent differential added to points between Kenova and Salem, W. Va., approximately 300 miles southeast of Kenova toward Norfolk. Trebein and Leesburg are located in central freight association percentage group territory. The group in which Leesburg is located takes a differential of one-half cent per 100 pounds on eastbound grain and grain products under the group in which Trebein is located. The rates applicable to Norfolk at the time of the hearing were 14½ cents per 100 pounds from Trebein; 14 cents from Leesburg, increased January 15, 1915, pursuant to our decision in *The Five Per Cent case*, 31 I. C. C., 351, to 15.4 cents and 14.9 cents, respectively.

Complainant argues that as the various destinations of its shipments are intermediate from the points of origin involved to Norfolk and require shorter hauls, the rates applicable should not have exceeded and should not now exceed the rates concurrently in effect to Norfolk. Complainant considered the rates from Trebein and Leesburg to Norfolk reasonable and would be satisfied with rates to the destinations involved established on the same basis.

No evidence was adduced by defendants at the hearing in these cases. Certain of defendants, moreover, filed a statement expressing willingness to have the issues presented decided in accordance with our findings in *Bluefield Shippers' Asso. v. N. & W. Ry. Co.*, 22 I. C. C., 519, and *Washington Milling Co. v. N. & W. Ry. Co.*, 27 I. C. C., 546.

Counsel for defendants asserts that the facts in relation to the instant cases are analogous in all respects and entirely dependent upon the cases cited in this statement, but we can not accept this conclusion. No mention was made in the *Washington Milling Company case, supra*, of a departure from the long-and-short-haul rule of the fourth section. The *Bluefield case, supra*, involved class and commodity rates in addition to the rates on grain and grain products from Columbus and Cincinnati over the Norfolk & Western to Bluefield and the Virginia cities. The situation relative to grain rates was similar to the situation under consideration. Bluefield is intermediate to Roanoke, Va., and the rates to Bluefield were higher than to Roanoke and points east thereof. We said that—

Upon a further and perhaps fuller view of this entire situation we hold that there are to-day at Roanoke competitive conditions which do not obtain at Bluefield and which compel the maintenance at that point of the rates now in effect from the western points of origin here under consideration,

but added that—

Exercising our best judgment upon the facts before us, we hold that the present rates from both Cincinnati and Columbus to Roanoke are lower than they might reasonably be were it not for the competition which has induced them, but we feel that in so holding as to Cincinnati the extreme limit has been reached,

and—

Under these holdings we shall permit the charging of higher rates at intermediate points than to Roanoke and points east from Pittsburgh, Columbus, Cincinnati, Chicago, and kindred points, so long as the present rates from these points to Roanoke and points beyond do not exceed those now in effect, and provided that no higher rates are charged at Bluefield and points to the west than have been found reasonable from Cincinnati, Columbus, and Pittsburgh.

We held, in short, that while rates on grain products from Columbus and Cincinnati to certain intermediate points on the main line of the Norfolk & Western might be higher than to Roanoke, the

rates applied to intermediate points west of and including Bluefield should not exceed the rates then applicable to Roanoke. As the rates to points west of Roanoke, but not including Bluefield, were not shown to be unreasonable, we permitted higher rates to such points than the rates effective to Roanoke. Our holding did not establish, however, that the conditions prevailing at Roanoke had resulted in rates to that point that are less than reasonable in all cases. There is no evidence in these cases to show that the rates applicable from Leesburg and Trebein to Roanoke were less than reasonable or to indicate that the rates charged to the intermediate points in question were reasonable. To justify their higher rates to intermediate points than to Norfolk defendants must have proved, among other things, that the rates to the more distant points were unreasonably low and that the rates to the intermediate points were not unreasonable. Defendants are asking relief broader than the relief afforded in the *Bluefield* case and without offering any additional testimony to support their request. Upon the facts disclosed we find that defendants' application for authority to charge lower rates on grain and grain products to Norfolk from both Trebein and Leesburg than the rates contemporaneously applicable on like traffic to intermediate points west of and including Bluefield should be denied.

Under the present tariffs the rate on grain products from Trebein to Roanoke is 1.6 cents per 100 pounds higher than the rate from Columbus; the rate from Leesburg 1.1 cent higher than the rate from Chillicothe. The distances to destinations are 59 miles longer from Trebein than from Columbus and 34 miles longer from Leesburg than from Chillicothe. These 1.6-cent and 1.1-cent differences cited appear to be reasonable differentials over the rates from Columbus and Chillicothe, and in conformity with our finding relative to the fourth section features involved we find no reason why these differentials established on traffic to Norfolk should be exceeded on traffic to main-line points west of and including Bluefield. We find, therefore, that the rates on grain products from Trebein and Leesburg to main-line points on the Norfolk & Western west of and including Bluefield were and for the future will be unreasonable to the extent that they exceeded or exceed, respectively, 15.4 cents, 14.9 cents per 100 pounds.

Reparation is asked on past shipments but can not be allowed.

The rates established to main-line points on the western portion of the Norfolk & Western are the result of the location of such points intermediate to the Virginia cities, the competitive forces found to exist from Roanoke eastward, and other controlling considerations. The complainant makes no distinction between main-line and branch-line points, but we find upon the facts disclosed that the rates charged

on complainant's shipments from Trebein and Leesburg to branch-line stations on the Norfolk & Western west of Bluefield are not shown to have been or to be unreasonable.

All the shipments involved but three were made to stations west of Bluefield. Two of the excepted stations, Tipton and Mount Carmel, Va., are located on branches of the Norfolk & Western; and the third, Rocky Gap, Va., on the New River, Holston & Western Railroad, which connects with the Norfolk & Western at Narrows, Va. Conformably to our findings relative to the rates assailed to branch-line points on the Norfolk & Western west of Bluefield, we find that the rates charged complainant to the three points described east of Bluefield are not shown to have been or to be unreasonable.

Some of the shipments involved moved under a milling-in-transit arrangement from points beyond Trebein. A special arrangement was and is in effect at Trebein over the Pittsburgh, Cincinnati, Chicago & St. Louis from certain local points on that road whereby the full local rate on grain shipments to Trebein is charged, with refund down to an arbitrary of $1\frac{1}{2}$ cents per 100 pounds when the grain is milled in transit at Trebein. This arrangement does not appear to exist at Leesburg. Counsel for complainant expressly waives all claims for reparation on through shipments moving under milling-in-transit arrangements from points west of Trebein, but claims reparation on shipments moving under the special arrangement just described. The contention is that shipments under this arrangement are local shipments from Trebein. To this we do not assent. Such shipments moved at a lower rate than the combination of locals and were shipments from points of origin beyond Trebein to final destinations. As only the rates from Trebein and Leesburg are assailed, none of the shipments originating at points other than Trebein and Leesburg is in issue here.

Although the complaints herein embrace rates on both grain and grain products, complainant's shipments were grain products only, and its testimony and exhibits were directed to show the unreasonableness of the rates on grain products. We therefore have excluded from our conclusions any findings as to rates on grain except under the fourth section. We observe, however, that the existing relationship between rates on grain and grain products should be preserved, and nothing that we have said should be construed as in any way altering or disturbing such adjustment.

An order will be entered in accordance with the findings herein named.

INVESTIGATION AND SUSPENSION DOCKET No. 514.
WESTBOUND TRANSCONTINENTAL REFRIGERATION
CHARGES.

Submitted May 5, 1915. Decided May 25, 1915.

1. Proposed new refrigeration charges on perishable commodities, iced by the shipper and delivered to the carrier with specific notice not to re-ice in transit, not justified.
2. Proposed increased charges per car for the re-icing in transit of perishable commodities shipped from Missouri River territory to north Pacific coast, Spokane, and Montana territories, justified.

H. A. Scandrett, Charles Donnelly, J. F. Finerty, jr., T. J. Norton, and F. H. Wood for respondents.

W. E. Lamb for Citrus Protective League.

C. J. Faulkner, jr., and H. F. Crafts for Armour & Company.

Thomas Creigh, J. A. McNaughton, C. O. Cornwell, and Cassoday, Butler, Lamb & Foster for Cudahy Packing Company.

Henry Veeder, R. C. McManus, and R. D. Rynder for Swift & Company.

F. W. Davis for Morris & Company.

W. R. Brown for Sulzberger & Sons Company.

M. S. Hartman for Nebraska Butter & Egg Association, Fairmont Creamery Company, and Spokane Merchants' Association.

Grant Thornburgh for Beatrice Creamery Company.

R. Muehlberg for Anheuser-Busch Brewing Association.

H. W. Knoche for Theodore Hamm Brewing Company.

H. F. Voges for Minneapolis Brewing Company.

H. A. Walter for J. Gund Brewing Company, W. J. Lemp Brewing Company, J. Schlitz Brewing Company, Pabst Brewing Company, Schoenhofer Brewing Company, Heilemann Brewing Company, C. & J. Michel Brewing Company, J. Schmidt Brewing Company, Independent Brewing Company, Duluth Brewing & Malt Company, Fitzger Brewing Company, and other brewing interests.

J. S. Burchmore and L. M. Walter for all beer shippers.

H. D. Driscoll for Topeka Traffic Association and Kansas Car Lot Egg Shippers' Association.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The tariff schedules involved in this proceeding, filed to take effect August 31, September 30, November 15, and December 15, 1914, pro-

posed per car charges for the transportation of perishable commodities iced by the consignor and delivered to the carrier with specific notice not to re-ice in transit from Missouri River territory to Pacific coast and intermountain territories; also increased charges for re-icing in transit shipments from Missouri River territory to north Pacific coast territory, Spokane territory, and Montana points. The charges proposed for shipments not to be re-iced in transit involve a departure from the previously established practice. The increased re-icing charges proposed involve an adjustment of those charges relative to the charges imposed for similar traffic to California terminals. The schedules are suspended, some until June 29, 1915, the remainder until September 15, 1915. Respondents are all of the carriers participating in the traffic described. The active protestants are meat packers, beer brewers, and dairy products shippers located in or shipping from Missouri River territory.

The principal commodities affected by the schedules involved are sweet pickled meats, dry salted meats, lard, beer, butter, eggs, and poultry, all of which move in refrigerator cars. At times some of the commodities move without artificial refrigeration. Some move in equipment owned by shippers. The freight charges, which are not in controversy, are the same whether the shipments are or are not refrigerated and regardless of the equipment used. The beer shipped is never re-iced in transit by the carriers; shippers pre-ice their shipments by piling ice on top of the barrels or kegs.

CHARGES WHERE SHIPMENTS ARE NOT TO BE RE-ICED.

A charge of \$7.50 per car was proposed at first, increased subsequently to \$17.50 per car. All of the schedules proposing these charges were suspended except the schedules proposing a \$7.50 charge on shipments to north Pacific coast territory through California junctions. At the argument counsel for respondents stated that the publication of the \$17.50 charge proposed to intermountain territory the same as to Pacific coast territory was erroneous and would be corrected by scaling the charges to intermountain territory.

Respondents rely in part upon the charge of \$7.50 per car prescribed for precooled shipments of citrus fruits from California to eastern markets, in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106; 23 I. C. C., 267. In that case we found that pre-cooling and the movement of citrus fruit without re-icing in transit was novel. Previously citrus fruit always had moved in ventilator cars or under standard refrigeration. We declared shippers were entitled to precool and pre-ice their shipments, but that the carriers were entitled to fair compensation for services rendered, not paid for by the rates charged. For the latter an additional charge of \$7.50

per car was found to be reasonable, which included compensation for hauling the ice bunkered in the cars and \$5 per car to cover repairs to bunkers. The rates charged were found to include some compensation for hauling the ice in the bunkers. We found also that 2.5 tons per car constituted a liberal estimate of the average weight of the ice bunkered in the cars for the entire haul of precooled shipments, observing further that the closer and therefore heavier loading possible for precooled shipments meant greater revenues for the carriers than from shipments made under ventilation or standard refrigeration. See also *A., T. & S. F. Ry. Co. v. U. S.*, 232 U. S., 199, and *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17.

The present case is clearly distinguishable. The charges proposed here are not for a new service in transportation, but for an established service. Practically all of the perishable commodities shipped west from Missouri River territory always have been precooled, as they all require refrigeration as soon as possible in the course of their production, and detention in cold storage until transported. Many of the commodities are so cold when loaded into cars that but for the insufficient insulation of the cars no ice would be necessary. Their shipment under refrigeration with notice to the carriers not to re-ice them in transit is as old as their transportation. It can not be said, therefore, that respondents are entitled to furnish refrigeration in transit or that a new kind of transportation service is required.

Respondents argue that the cost of hauling the ice bunkered in the cars used for shipments of the kind involved is something less than \$12 per car, and that an apportionment of the \$5 per car item allowed in the *Arlington Heights case*, *supra*, for repairs to bunkers, between respondents' and shippers' equipment, would give respondents something less than \$3.50 per car. An item of \$2 per car is claimed on account of the expense of supervising shipments not re-iced in transit. Respondents admit, however, that no service will be rendered for the charges proposed that has not been rendered heretofore without specific charge. Furthermore, the schedules involved provide that when ice or other preservative is in the bunkers of the cars, or is loaded in the body of the car with the freight shipped, no charge will be made for its transportation. These rules have been in effect for a long time and indicate plainly that the related freight rates always have included refrigeration charges, including compensation for hauling the ice used for refrigeration, damage to ice bunkers, and for supervision. The inclusion of refrigeration charges in the freight rates was voluntary on respondents' part. The freight rates applicable are not in controversy, but appear to be sufficiently high to justify the rules mentioned. The carload earnings on the commodities involved exceed the carload earnings on citrus fruit moving

in the opposite direction, including the earnings under the refrigeration charges imposed.

We find upon all of the facts of record that respondents have not justified the proposed charges of \$7.50 per car and \$17.50 per car, and an order will be entered requiring respondents to cancel the schedules proposing them.

CHARGES FOR RE-ICING IN TRANSIT.

The present charges for re-icing in transit from Missouri River territory are \$15 per car to north Pacific coast territory, \$15 to Spokane territory, and \$13 to Montana territory. The charges proposed are \$25 per car to north Pacific coast territory, \$20 to Spokane territory, and \$15 to Montana territory. For some time the charge from the same points of origin to California terminals has been \$25 per car. Respondents argue that the increased charges proposed are justified by the cost of the service rendered and by comparison with the charges to California terminals.

Shipments re-iced in transit require more refrigerating materials, the haul of greater total weights of ice, extra switching to and from ice houses, more supervision, and involve greater risk of insufficient refrigeration than shipments that are not re-iced. The service is therefore more costly than ordinary refrigeration service and justifies an additional charge.

Respondents and protestants disagree as to the cost of the extra ice furnished by respondents. Respondents introduced three exhibits, each covering a period of one year, which show that 4,827,104 pounds of ice and salt were furnished for 465 cars moved from Missouri River territory to north Pacific coast territory, an average of 10,380 pounds, or 5.19 tons per car. The total cost on 465 cars enumerated in these three exhibits is placed at \$7,656.97. These figures give an average of \$15.52 per car for 465 cars, or \$2.99 per ton, as the cost of the materials furnished in place, exclusive of switching. In the *Arlington Heights case, supra*, we found that \$2.50 or \$3 per ton would be a liberal estimate of the cost of ice furnished by the carriers there involved, while in *Railroad Commission of California v. A. G. S. R. R. Co., supra*, a minimum cost of \$2.53 per ton was computed. The use of salt in addition to ice for shipments of the kind here involved probably accounts for the higher cost of \$2.99 per ton. The low temperatures obtained by salted ice, though suitable for the commodities in controversy, might injure fruits.

The number of re-icings effected is placed at 1,557 for 214 cars, an average of 7.27 re-icings per car. In *Railroad Commission of California v. A. G. S. R. R. Co., supra*, we found that an average of seven switchings were required for the shipments there involved. On the

basis of seven re-icings in transit, an average of 1,483 pounds of salt and ice was furnished for each of the 465 cars, enumerated in respondents' exhibits at each re-icing station. As the bunkers are required to be replenished to full capacity at each re-icing, respondents virtually carried the ice bunkered in the cars at the points of origin to the points of final destination with no re-icing beyond the first re-icing station. The 465 cars enumerated had an aggregate bunker capacity of 3,294,025 pounds, or an average of 7,083 pounds per car. Evidence introduced relative to cars not re-iced in transit indicates that when the bunkers are filled to capacity at Missouri River points of origin approximately one-fourth remains unmelted upon arrival at Pacific coast destination. On this basis, the average weight of ice which would have been hauled the entire distance in the 465 cars described, if they had not been re-iced in transit, would not have exceeded 4,427 pounds per car. As previously shown, approximately 1,483 pounds per car melted between re-icing stations. The average weight of salt and ice per car hauled the entire journey, therefore, is given substantially by the difference between the average bunker capacity per car, 7,083 pounds, and one-half of the average weight of salt and ice furnished at each re-icing point, 741 pounds, or 6,342 pounds, as compared with an average of 6,392 pounds per car, based on respondents' assertion that 2,972,507 pounds of salt and ice were carried the entire journey in the 465 cars enumerated in their exhibits. A fair estimate, therefore, is 6,367 pounds per car. This amount, less 4,427 pounds, the average weight of ice hauled when shipments are not re-iced, gives 1,940 pounds per car as the average weight of additional salt and ice hauled the entire journey on account of re-icing. In the cases previously referred to we allowed \$5 per ton for hauling refrigerating ice from California points to Chicago. The distances here involved are shorter, and respondents should not receive more than \$4.35 per ton, or \$4.21 for 1,940 pounds. For the switching required we find respondents entitled to \$1.75 per car for seven switchings, or 25 cents per movement, as in *Railroad Commission of California v. A. G. S. R. R. Co.*, *supra*, and for extra cost of supervision \$2.50 per car. Added to the cost per car for refrigerating materials previously found, \$15.52, these figures give a total of \$23.98 for service not paid for by the freight rates applicable. The \$25 charge proposed would leave respondents a margin of \$1.02 for risk and profit. The risk appears to be slight, and since the service is only ancillary the profit should not be very great. Similar analysis give substantially the same results relative to the charges proposed to Spokane and Montana territory.

Protestants would prefer refrigeration under what is termed the "shipper's icing plan" whereby cars are forwarded to be re-iced at certain definite points at charges based on stated charges for ice

and salt. The present plan, protestants assert, gives maximum efficiency of refrigeration, but only by the use of a maximum quantity of ice and at maximum cost, to which respondents reply that they are furnishing transportation service and are not selling salt and ice. The arrangement asked was disapproved in *Refrigeration Charges on Fruits and Vegetables*, 29 I. C. C., 653. The charges imposed for refrigerating commodities of the kind involved, in other parts of the country, generally are based on stated charges per ton for ice and separately stated charges for salt; so also as to shipments of fresh meats and packing-house products westbound over respondents' lines to points as far west as Montana common points. However, the record before us is insufficient upon which to base a finding on other than the reasonableness of the charges involved. Protestants also refer to differences between the refrigeration of fruit in transit and the refrigeration of protestants' shipments, but these differences are reflected in the much higher refrigeration charges for fruit shipments.

We find upon the whole record that respondents have justified the proposed \$25 per car charge involved from Missouri River territory to north Pacific coast territory; also the \$20 and \$15 charges proposed to Spokane and Montana territories. Our orders will permit these charges to be made effective.

No. 6802.

WILSON-LEUTHOLD LUMBER COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 9, 1914. Decided May 24, 1915.

Rate of 20 cents per 100 pounds for the transportation of lumber in carloads from Spokane, Wash., to Butte, Mont., over the lines of the Northern Pacific and the Chicago, Milwaukee & St. Paul railways, found unreasonable. Reasonable maximum rate prescribed for the future.

Danson, Williams & Danson for Wilson-Leuthold Lumber Company.

E. J. Cannon for Northern Pacific Railway Company.

Thomas Balmer for Great Northern Railway Company.

Charles Donnelly, O. W. Dynes, J. F. Finerty, and E. C. Lindley for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complaint in this case was brought by the Wilson-Leuthold Lumber Company, a copartnership engaged in the business of manufacturing and shipping lumber and other forest products, against the Chicago, Milwaukee & St. Paul Railway Company, hereinafter referred to as the Milwaukee; the Northern Pacific Railway; the Great Northern Railway; the Oregon-Washington Railroad & Navigation Company; the Idaho & Washington Northern Railroad; and the Butte, Anaconda & Pacific Railway, as defendants. It alleges that defendants' rates for the transportation of lumber from Sturgeon and Laclede, Idaho, and Spokane and Deer Park, Wash., to destinations in Montana, of which Butte is typical, are unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act. Reparation is asked in connection with shipments made on the rates attacked.

At the hearing the complaint was amended to include the Deer Park Lumber Company, a corporation, as a party complainant, upon representations that said company had succeeded to the interests of the original complainants in the lumber business at Deer Park. So far as the record shows, the interests of the copartnership and the

succeeding corporation, hereinafter referred to as the complainants, are identical; and no attempt will be made herein to distinguish between them.

Sturgeon is a local point on the Idaho & Washington Northern Railroad. Laclede and Deer Park are local points on the Great Northern Railway. Complainants have a mill at Sturgeon from which, at the time of the hearing, shipments were still being made. The available timber had, however, practically been exhausted, and it was stated that operations there would, within a short time, be discontinued.

Complainants have purchased recently a mill at Deer Park, and this is expected to be their principal shipping point in the future. They have no mill at Laclede, but made shipments from the Laclede mill at a time when they were unable to fill from their own mills a contract calling for delivery at certain Montana points. Complainants' interest in the Spokane rates seems to arise from the fact that lumber from the Deer Park mill moving to Butte over routes other than that of the Great Northern passes through Spokane. The rate applicable to such shipments is the combination on Spokane.

The violations of the fourth section relied upon were not specified in the complaint, nor were they developed at the hearing or in the briefs.

The following table shows rates on lumber, per 100 pounds, at present in effect from and to the points shown, as well as the mileage via different routes and the earnings per ton-mile:

From—	To—	Via—	Miles.	Rate.	Earnings per ton-mile.
Deer Park.....	Butte.....	G. N.....	696.1	\$0.28	\$0.0080
Do.....	do.....	G. N.; N. P.....	402.8	¹ .25	.0124
Spokane.....	do.....	G. N.....	697.4	.25	.0072
Do.....	do.....	N. P.....	376.3	.20	.0106
Do.....	do.....	C., M. & St. P.....	857.8	.20	.0112
Sand Point.....	do.....	G. N.....	622.4	.22	.0070
Do.....	do.....	N. P.....	808.2	.16	.0104
Coeur d'Alene.....	do.....	S. & L. E.; G. N.....	729.0	.30	.0082
Do.....	do.....	N. P.....	370.0	.175	.0066
Do.....	do.....	C., M. & St. P.....	376.8	.175	.0068
Laclede.....	do.....	G. N.....	626.5	.25	.0079
Do.....	do.....	G. N.; N. P.....	322.3	¹ .20	.0124
Sturgeon.....	do.....	I. & W. N.; G. N.....	684.0	.30	.0068
Do.....	do.....	I. & W. N.; N. P.....	352.7	¹ .195	.0111
Rathdrum.....	do.....	I. & W. N.; G. N.....	687.1	.30	.0087
Do.....	do.....	I. & W. N.; N. P.....	349.6	.175	.0100
Do.....	do.....	I. & W. N.; C., M. & St. P....	374.8	.195	.0104
Leavenworth.....	do.....	G. N.....	894.6	.33	.0073
Springdale.....	do.....	do.....	716.2	.30	.0084
Deer Park.....	Spokane.....	do.....	26.5	.05	.0377
Laclede.....	Sand Point.....	do.....	14.1	.04	.0667
Leavenworth.....	Spokane.....	do.....	197.2	.15	.0182
Springdale.....	do.....	do.....	46.6	.065	.0279

¹ Combination on Spokane.² Combination on Sand Point.³ Combination on Rathdrum.

Complainants' allegations, both of unreasonableness and of discrimination, are based upon the fact that lower rates apply to Butte from Coeur d'Alene, Rathdrum, and Sand Point, Idaho, than from the four points of origin named in the complaint. The prayer is, in effect, that these points of origin be given a blanket rate of 17½ cents to Butte via all routes. Evidence on behalf of the complainants would seem to indicate that the routing is a matter of indifference, provided the service by all lines is equal. The evidence in support of this prayer is confined to a comparison of distances and ton-mile earnings and to a showing that on lumber moving to Billings, Mont., and to points east thereof generally, these shipping points in Washington and Idaho are grouped for rate-making purposes by the various carriers serving them. Neither of complainants' witnesses testified as to operating conditions or density of traffic. One of them stated that he knew nothing about, and did not consider, such conditions in giving his opinion, and failed "to see just where operating conditions are brought into rate making in this case," although he admitted "that there are some operating difficulties on the Great Northern that do not exist on other lines." He stated that these matters, in his view, constituted a minor element.

From Sturgeon, Laclede, and Deer Park the lowest rates to Butte are combinations on Rathdrum, Sand Point, and Spokane, respectively. From any of these points to Butte the route embracing the Great Northern is very much longer than that of either of its competitors, and that line does not attempt to meet the rates maintained by the Northern Pacific or the Milwaukee.

Complainants admit the reasonableness of the local rates of 2 cents, 4 cents, and 5 cents between Sturgeon and Rathdrum, Laclede and Sand Point, and Deer Park and Spokane, respectively. They contend, however, that in each instance the carrier receiving the long haul should absorb the local rate to the junction point. The carriers show that this is not customary throughout this territory on noncompetitive traffic moving from local points on rates and for distances such as are here in question.

Upon the record we see no ground for requiring the Great Northern to meet via its circuitous route the rates in effect over the shorter lines. Nor do we find that the rates to Butte from Sturgeon and Laclede have been shown to be unreasonable or discriminatory.

Spokane, however, is not a local point. From this city to Butte the rate is 20 cents over the line of either the Northern Pacific or the Milwaukee. Each of these carriers maintains a rate of 17½ cents from Coeur d'Alene to Butte. From that point traffic for Butte moving over the Milwaukee is carried west to Spear, Wash., a suburb of Spokane, and thence to destination. The haul exceeds

that from Spokane over the line of the same carrier by some 28 miles.

The defendants do not contend that there should be any difference between the rates from Spokane, Coeur d'Alene, and Rathdrum to Butte, so far as the Northern Pacific and the Milwaukee are concerned, and are willing to apply the same rate from the three points. They do not concede that the Spokane rate is in itself unreasonable, and suggest that the Commission might "make the basis 20 cents from Rathdrum and Coeur d'Alene, as well as reduce the Spokane rate to 17½ cents." This reasoning is not convincing. Considering all the facts of record it does not appear that the rate of 17½ cents from Rathdrum and Coeur d'Alene is unduly low or that it would be unremunerative if applied from Spokane. We are of opinion and find that the present rate of 20 cents from Spokane to Butte is unreasonable to the extent that it exceeds 17½ cents. An order will issue requiring the establishment over the lines of the Northern Pacific and of the Milwaukee of a rate not in excess of 17½ cents per 100 pounds for the transportation of lumber in carload lots from Spokane to Butte.

Upon the basis of the present local of 5 cents to Spokane, plus the rate of 17½ cents beyond, complainants will be afforded a through rate from Deer Park to Butte of 22½ cents as against the present rate of 25 cents.

Upon the record in this case we are of opinion that no reparation should be awarded.

An order will be entered in conformity with the foregoing conclusions.

24 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 497.
RATES ON HAY TO CHICAGO, ILL.

Submitted January 16, 1915. Decided May 24, 1915.

Supplements to the Lowrey tariff governing switching in the Chicago, Ill., switching district, by which the Wabash Railroad Company proposes to discontinue its absorption of switching charges in that district on hay in carloads, allowed to become effective. Orders of suspension vacated.

Jeffery & Campbell for Board of Trade of the City of Chicago.

J. E. Robinson for Albert Miller & Company.

N. S. Brown for Wabash Railroad Company and its receiver.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The tariffs under suspension in this proceeding are supplements to what is known as the Lowrey tariff and were filed by respondent, the Wabash Railroad Company, hereinafter called the Wabash, to become effective July 26, 1914, and they were suspended until May 23, 1915, upon protests by the Board of Trade of the City of Chicago and Albert Miller & Company, of Chicago.

The Wabash proposes in these supplements to except hay hauled over its line to Chicago from the application of the Lowrey tariff. The history of that tariff is given in *Advances on Coal Within Chicago Switching District*, 27 I. C. C., 71. Under it the Wabash now absorbs the charges of other carriers for switching hay in carloads from its own rails to points of delivery within the Chicago switching district on the rails of those carriers. Under the proposed supplement such switching charges would be paid by the shipper in addition to the line-haul rate.

The Lowrey tariff embodies an agreement between some 37 issuing and participating carriers under which they switch carload traffic, with some exceptions, to and from team tracks, industrial plants, warehouses, elevators, and other points of destination or origin within the Chicago switching district therein described upon the line-haul rate to Chicago, unless that rate aggregates less than \$15 for the carload, in which case the carrier receiving the line haul into or out of the switching district absorbs only so much of the switching charge of its connecting carrier as will leave it the same earning for that car as if it had received \$15 for the line haul and paid the entire switching charge. More than 2,000 places in the Chicago

switching district are designated by the carriers as points of origin and destination subject to the terms of this tariff.

From the inception of the agreement each issuing carrier has excepted designated commodities. Without enumerating these it is sufficient to say that at the present time the exceptions made by the various carriers range from 2 to 16. The Wabash maintains 4, viz, coal, coke, grain, and live stock, and now proposes to add hay as a fifth.

It alleges that the suspended supplements were filed on account of the necessity of conserving its revenues, and contends that the absorption by it of these switching charges on hay renders its transportation of that commodity to Chicago unremunerative. In support of this position it introduced, and relies almost entirely upon, an exhibit setting forth data concerning all carload shipments of hay transported over its line to Chicago and delivered to points on the rails of other carriers within the Chicago switching district during September and October, 1912, September and October, 1913, and August, 1914. The compilation was made from the original waybills.

The shipments in question, 77 in number, originated at points in Missouri, Kansas, Oklahoma, Indiana, and Ohio. The hauls averaged 267.6 miles, the rates ranged from 8 to 26 cents per 100 pounds, and the average loading was about 25,000 pounds. The total revenue received was \$2,190.93, averaging \$28.45 per car; and the total absorption paid was \$676.90, averaging \$8.79 per car, or about 31 per cent, leaving an average balance of \$19.66 per car, which would yield average ton-mile earnings of 5.9 mills and car-mile earnings of 6.8 cents for the line haul. About 50 per cent of all hay transported to Chicago by the Wabash is there switched to points of delivery on the rails of other carriers.

Hay is shipped to Chicago by the producers or country dealers and is there sold through the medium of commission merchants, who receive as compensation a commission of 75 cents a ton, with minimum \$7.50 per car. The shippers pay freight charges and all terminal charges not absorbed by the carriers.

The protestants represent the commission merchants and, through them, the shippers. Hay is delivered from the team tracks of the Wabash at two points only in the switching district. These are somewhat inaccessible, and consequently are not much frequented by purchasers of hay. For this reason it is difficult to sell hay from the team tracks of the Wabash in competition with that sold at points of delivery on other railroads, and hay sold at these points on the Wabash ordinarily brings from 50 cents to \$1 less per ton than that sold at down-town team tracks on other lines. The com-

mission merchants testify that, under the proposed supplements, shippers at points of origin on the Wabash will be at a disadvantage as compared with shippers on other lines in marketing their hay in Chicago and will seek other markets, such as St. Louis, Detroit, and Cleveland.

Protestants' evidence consisted principally of six exhibits showing comparative ratings and minimum weights on hay and many other articles in the official classification, and comparative rates, distances, and revenue from transportation of hay and other commodities to Chicago and to other destinations from various points of origin. These tend to show that the ton-mile and car-mile earnings realized on hay by the Wabash are considerable in comparison with those realized by it on other commodities which it does not propose to except from the Lowrey tariff.

The Lowrey tariff arose as a voluntary agreement between the carriers. It was not originated by operation of law, nor was it the result of any form of adjudication or of any order of the Commission, or of any other agency of the government.

In *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93, the Commission, at pages 101 and 103, pointed out the well-defined distinction between an absorption which may be made by a trunk line carrier voluntarily and the division of a joint through rate which, in an appropriate proceeding, may be prescribed by the Commission:

While the trunk line may thus make such absorptions voluntarily, we have not had cited to us and are not ourselves familiar with any principle of law under which the Commission could compel the trunk line thus to bear not only the expense of the service of a connecting terminal line but the reasonable profit in addition, which presumably will be included in the terminal carrier's rate. * * * We are not to be understood as saying that when carriers in the through route under their tariffs absorb the switching charge of a terminal line, the resulting rates are not to all intents and purposes and in fact joint rates so far as concerns the shipping public. What we do say is that while the trunk lines may thus voluntarily establish such rates on that basis, we would not be justified in requiring them to do so.

The burden of proof of the reasonableness of rates increased after January 1, 1910, is upon the carriers, both as to the total or through charges and the separately established or separately stated charges which make up the total. *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 27 I. C. C., 24; *Newport Mining Co. case*, 33 I. C. C., 645. And it is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. *Washington, D. C., Store-Door Delivery*, 27 I. C. C., 347; *Transit Regulations on Grain and Dried Beans*, 32 I. C. C., 38.

In *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438, it was held that the failure of five carriers to absorb the switch-

ing charges on grain delivered to Chicago industries off their lines, while absorbing such charges in the cases of other commodities, did not constitute unlawful discrimination. The proposed cancellation of absorption of switching charges on sand and gravel from points in Wisconsin and Illinois to Chicago, Ill., and points in Indiana within the Chicago switching district was found to be justified in *Gravel and Sand Switching Charges at Chicago*, 32 I. C. C., 291. The Commission said, page 296:

The fact that the Chicago & North Western Railway Company has in the past voluntarily absorbed the intermediate switching charge does not, standing alone and unsupported by evidence to show that the increase resulting from the cancellation of this absorption is unreasonable or discriminatory, afford a sound basis upon which the Commission may require the continuance of such practice. *Kansas City & Memphis Railway Co. Rate Cancellation*, 28 I. C. C., 640.

Upon the whole proof presented the respondent has justified the cancellation of the absorption of switching charges proposed by the suspended supplements. The orders of suspension will accordingly be vacated.

34 I. C. C.

No. 6731.
ALBERT MILLER & COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 6731 (Sub-No. 1).
E. C. BEST COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 7, 1914. Decided May 24, 1915.

Upon complaints alleging that defendants' rules and charges relating to the protection from cold of potatoes in transit are unreasonable and unjustly discriminatory; *Held*, That complainants have not shown themselves entitled to relief. Complaints dismissed.

J. E. Robinson for Albert Miller & Company.

G. F. Simpson for E. C. Best Company.

Charles Donnelly and *J. F. Finerty* for Northern Pacific Railway Company and Great Northern Railway Company.

Henry Blakely for Northern Pacific Railway Company.

P. B. Beidelman for Great Northern Railway Company.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

R. H. Widdicombe, A. F. Cleveland, F. P. Eyman, and C. C. Wright for Chicago & North Western Railway Company.

A. G. Licher for Chicago, Burlington & Quincy Railroad Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The complaints in these cases present the issue as to whether certain rules of defendants' tariffs, relating to the protection from cold of potatoes in transit, are just, reasonable, and nondiscriminatory. The complainants are wholesale dealers in potatoes at Chicago, Ill., and Minneapolis, Minn. Both ship potatoes in carloads from points in Minnesota, Wisconsin, and other states to consuming markets in various parts of the country.

When the original complaints were filed these rules provided that, in order to protect shipments of potatoes from damage on account of frost, shippers should either provide such protection or request the carriers to do so. If the shipper elected to provide such protection, "temporary lining or false flooring, or both, also stoves, fittings, and fuel for same, sufficient to properly protect the shipment," were required to be "furnished and installed by shipper and at his expense." Free return of the linings, false floors, stoves, and other material, via the route over which the shipment originally moved, was provided for when such articles were delivered to depot at destination and billed to the point of origin. Provision was made for free carriage of an attendant each way, with one or more carloads, via almost all routes.

The rules further provided that, when the carriers furnish heated car service, charges varying from 4 cents to 7 cents per 100 pounds should be assessed therefor. These charges were based territorially; that is, between any point within one named state and any point within another named state, the same rate per 100 pounds was fixed. The rules further provided that when heater cars under heat were reconsigned after arrival at original destination a reconsignment charge would be made of \$4 per car, plus \$1 per car per day for heater service during the entire time the car was held for reconsignment. Except as to a few particulars hereinafter noted the rules are the same now as when the proceedings were commenced.

The complaints, which are somewhat vague and indefinite, would seem to allege, in substance, that the rules respecting the free return transportation of attendants in charge of shipments are unjustly discriminatory; that the rules relating to the free return of protective linings, false floors, and stoves are unreasonable; that the charges for heated car service, when furnished by the carriers, are unreasonable and unjustly discriminatory; that the reconsignment charge of \$4 per car, plus \$1 per car per day or fraction thereof, is unjust and unreasonable; and that the rules purporting to relieve the carrier from responsibility for damage from freezing, when occasioned by inadequacy of the protection furnished by the shipper, are both unreasonable and unlawful.

These grounds of complaint we shall now take up in order.

1. No action by this Commission is necessary regarding the rules governing the free return transportation of attendants, because the tariffs have been amended so that such transportation is now furnished in all cases where one carload shipment or more is involved.

2. Where the protective service is furnished by shippers the rules provide for the free return of the linings, etc., but require that they "must be delivered to the depot at destination of the delivering line

of the original shipment and the regular billing furnished from original point of shipment, bills of lading or shipping tickets to be issued to cover." The somewhat indefinite and unsatisfactory evidence in this regard tends to show that shippers can not interest their consignees sufficiently to insure the observance of this requirement. It is our opinion that the rule is not unjust or unreasonable.

3. For many years prior to January 1, 1914, these rates in the northwest were framed upon the basis that the expense of protecting shipments of potatoes from cold would be borne by the shippers. Since that date the carriers have stood ready to perform this protective service should the shippers so desire. The charge therefor purports to be based upon the decision of this Commission in *Investigation and Suspension Docket 168*, 25 I. C. C., 159, wherein the Commission approved heater car service rates on potatoes from points in Maine to New England, New York, New Jersey, and Pennsylvania points. A comparison of general conditions in the north Atlantic states and in the northwest confirms the evidence on behalf of the carriers that the rates here attacked are even lower than those there prescribed for a similar service.

The tariffs under attack were published in response to suggestions and orders of this Commission with respect to the territories involved in the cases that have been before the Commission. Defendants announced at the hearing that they were then incorporating like provisions in tariffs applying from Montana and other western states, and our tariff files show that such provisions have since been made effective. Rules relating to protective service, similar to those here in question, and embracing all perishable freight, have been in effect since December 1, 1914.

In our opinion the charges of 4 cents to 7 cents per 100 pounds for the protective service in connection with potato shipments are not shown to be unreasonable.

4. The regular reconsigning charge is \$2 per car when shippers furnish the protective service, and \$4 per car, plus \$1 per car per day or fraction thereof, for detention when the protective service is furnished by the carriers. The defendants propose, when such service is furnished by them, to charge \$3 per car, without the \$1 per car per day for detention, and have since filed tariff provision therefor.

5. Complainants object most strongly to provisions relieving the carrier from responsibility for loss due to frost or overheating, not the direct result of negligence of the carrier, when the protective service is furnished by shippers and the shipments are in charge of attendants. This precise question was considered by the Commission in *Protection of Potato Shipments in Winter*, 29 I. C. C., 504, 507. It was there held that a similar rule was fair and reasonable.

No new light on the subject is furnished by this record. A shipper has the option of requiring the carrier to furnish the protective service and of paying the tariff charge therefor, or of furnishing the service himself with his own facilities and at his own risk without charge by the carrier. The rule upon its face bears no element of unfairness, and it was not shown to be in any way unreasonable.

It may here be noted, parenthetically, that where the heater service is performed by the shipper and loss or damage results from frost or overheating, not the direct result of negligence of the carrier, such loss or damage is not caused by the carrier. It follows, therefore, that the rule here attacked does not violate the Cummins amendment of March 4, 1915, to section 20 of the act to regulate commerce.

We find that the grievances here complained of are practically the same as have been presented to us in various recent cases. The Commission has given careful consideration to them. See *Protection of Potato Shipments in Winter*, 26 I. C. C., 681, 686; same case, 29 I. C. C., 504, 507; *Rental Charges for Insulated Cars*, 31 I. C. C., 255. In view of these decisions and of the facts and circumstances disclosed by the present record, we are of opinion and find that complainants have not shown themselves entitled to relief. The complaints will therefore be dismissed, and it is so ordered.

34 L. C. C.

No. 6806.
ARIZONA CORPORATION COMMISSION
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 30, 1914. Decided May 25, 1915.

The complaint attacks as unreasonable the rates on sugar and sirup in straight and mixed carloads from producing and refining points in California to all points in Arizona. Subsequent to the hearing the carriers published reduced rates on these commodities to many points of destination in the state; *Held:*

1. Except as to the rates to Phoenix and Prescott, Ariz., the evidence of record does not show that the rates in effect at the time of the hearing on sugar and sirup in straight carloads, minimum weight 36,000 pounds, were unreasonable to a greater extent than the amounts of the reductions since made.
2. Rates to Phoenix and Prescott ordered to be established for the future upon a basis of not more than 5 cents per 100 pounds higher than the rates to the junction points.
3. No finding is made as to the rates on sugar and sirup in mixed carloads.

F. A. Jones for Arizona Corporation Commission.

F. H. Wood for Southern Pacific Company and Arizona Eastern Railroad Company.

T. J. Norton and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

Hawkins & Franklin for El Paso & Southwestern Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The Arizona Corporation Commission brings this proceeding against all carriers which are engaged in the transportation of sugar and sirup from points of origin in the state of California to points of destination in the state of Arizona. It is alleged that the rates on sugar and sirup, in straight and mixed carloads, from all refining and shipping points in the state of California to all points in the state of Arizona are unjust and unreasonable. It is not alleged, however, that the rates under attack cause any discrimination.

Substantial reductions have been made in the rates on sugar and sirup from California to Arizona points as a result of two recent decisions of the Commission, one of which has been announced since

this proceeding was commenced. In *Maier & Co. v. S. P. Co.*, 29 I. C. C., 103, a rate of 90 cents per 100 pounds for the transportation of sugar in carloads, minimum weight 36,000 pounds, from Los Angeles and Los Alamitos, Cal., to Benson, Ariz., was found to be unreasonable and in violation of the fourth section of the act. It was held that the rate to this point was unreasonable in so far as it was in excess of 60 cents.

In conformity with this decision the rate from Los Angeles to Benson was made 60 cents, effective March 15, 1914, and by the same tariff reductions were made to 60 cents in all rates which had exceeded 60 cents from the same point to main-line stations of the Southern Pacific in Arizona. Substantial reductions were also made in the rates on sugar from San Francisco. Prior to March 15, 1914, rates from this point were graded from 85 cents at Yuma, Ariz., to 100 cents at Bowie, Ariz., minimum weight 36,000 pounds. Effective on that date the rates from San Francisco to all points in Arizona on the main line of the Southern Pacific were fixed at 70 cents with the same minimum, and they have now been reduced to 60 cents, thereby putting them upon the same basis as those from Los Angeles. San Francisco has also been accorded the Los Angeles rates to other Arizona points.

This complaint was filed on April 15, 1914. At that time certain applications for relief from the provisions of the fourth section which concerned some of the rates here involved were pending before the Commission. These applications were decided after the hearing of the issues in this case and are reported in *Fourth Section Violations in Rates on Sugar*, 31 I. C. C., 511. Reference is made to the report in that case for a full statement of the facts and issues there involved. It is sufficient here to state that our order in that case denied authority to continue lower rates on sugar from San Francisco and other sugar-producing points in California to Trinidad, Colo., and other points east thereof, than the rates concurrently applicable on like traffic to intermediate points on the line of the Santa Fe. The order also denied authority to the Southern Pacific, El Paso & Southwestern, and the Chicago, Rock Island & Pacific to continue lower rates on sugar from San Francisco and other sugar-producing points in California to the Missouri River than the rates concurrently applicable to intermediate points west of Tucumcari, N. Mex. Pursuant to the orders made in *Fourth Section Violations in Rates on Sugar, supra*, the carriers filed new schedules of rates effective in November and December, 1914, which work substantial reductions in the rates which were in effect when this complaint was filed.

A further change in rates should be noted. Effective November 15, 1914, rates on sugar were established to practically all Arizona

points conditioned upon a minimum weight of 60,000 pounds, which rates were the same from all California producing points, and almost uniformly on a basis 5 cents lower than the rates from Los Angeles to the same destinations upon the 36,000-pound minimum. A desire for these lower rates with the higher minimum was expressed by complainant's witnesses.

The following table, in which certain points are taken as representative of all points of destination in Arizona, shows the recent reductions in rates on sugar to which we have referred in the foregoing paragraphs. Rates are stated per 100 pounds:

To—	From Los Angeles, Cal., effective—			From San Francisco, Cal., effective—		
	Prior to Mar. 15, 1914. ¹	Mar. 15, 1914, or subsequently. ¹	Nov. 15, 1914, or subsequently. ¹	Prior to Mar. 15, 1914. ¹	Mar. 15, 1914, or subsequently. ¹	Nov. 15, 1914, or subsequently. ¹
K	\$9.72	\$9.00	\$9.55	\$9.63	\$9.00	\$9.55
...	.88	.00	.55	.98	.00	.55
...	.82	.00	.55	1.00	.00	.55
...	1.00	.00	.55	1.00	.00	.55
L	.08	.75	.70	.08	.75	.70
...	.06	.00	.55	.06	.00	.55
...	.08	.00	.55	.08	.00	.55
...	.83	.00	.55	.83	.00	.55
...	.88	.00	.55	.88	.00	.55
...	.90	.00	.55	1.00	.00	.55
...	.90	.00	.55	1.00	.00	.55
...	.90	.00	.55	1.00	.00	.55
M	.00	.83	.77	1.00	.83	.77
...	.03	.75	.70	.03	.75	.70
...	1.30	1.00	.....	1.40	1.00	.....
...	1.05	.75	.70	1.15	.75	.70
N	.00	.55	.55	1.00	.00	.55
...	.00	.55	.55	1.00	.00	.55
O	1.21	.91	.85	1.21	.91	.85

¹ Minimum weight, 36,000 pounds.

² Minimum weight, 60,000 pounds.

Substantial reductions in the rates on sirup have also been recently made. Taking the stations named in the foregoing table the rates on sirup from Los Angeles in effect prior to March 15, 1914, compared with the present rates show the following reductions in cents per 100 pounds: To Yuma, from 66 to 53; to Kim, from 83 to 63; to Maricopa and Tucson, from 83 to 75; to Benson, Cochise, and Bowie, from 90 to 75; to Globe, from 130 to 115; to Kelton, from 105 to 90; to Bisbee and Douglas, from 90 to 75; to Clifton, from 121 to 106. The rates to Kingman, 72 cents, to Ashfork, Flagstaff, Holbrook, Phoenix, and Prescott, 75 cents, remain unchanged. It appears that the rate to Florence has been increased from 75 to 80 cents, and that the rate to Nogales has been increased from 90 to 97 cents. Relatively similar reductions have been made in the rates on sirup from

San Francisco. The minimum weight prescribed for the rates on sirup is 36,000 pounds. Rates have not been established for the minimum weight of 60,000 pounds, as in the case of sugar.

Prior to March 15, 1914, the rates on mixed carloads of sugar and sirup, minimum weight 36,000 pounds, from Los Angeles and San Francisco to Arizona points were substantially the same as the rates then in effect on sugar. In December, 1914, the commodity rates applicable to mixed carloads were canceled, leaving fifth-class rates applicable to all points in Arizona. To certain of these points the fifth-class rates were reduced, effective November 27, 1914. From Los Angeles to Yuma this reduction is from 66 to 53 cents; to Kim, from 83 to 63 cents; from San Francisco to Yuma the reduction is from 85 to 75 cents; to Kim, from 93 to 81 cents. The effect of these class-rate reductions is to make lower rates on the mixture of sugar and sirup to these two points than were formerly in effect. To certain other points the commodity rates formerly applicable were the same as the fifth-class rates. In the main, however, the cancellation of commodity rates applicable to mixed carloads of sugar and sirup has resulted in increased rates on this mixture.

An analysis of the changes made in the rates on sugar and sirup, as outlined in the foregoing paragraphs, shows that the rates now in effect to many Arizona points are substantially lower than when this proceeding was brought. It appears, also, however, that the rates to the main-line points which were formerly graded are now largely blanketed to all of these points. It is further to be noted that the destinations on branch lines have not been accorded the full reductions made to main-line points. The rate formerly in effect on sugar from Los Angeles both to Maricopa and Phoenix, with the minimum weight of 36,000 pounds, was 83 cents. The rates as reduced are now 60 and 75 cents, respectively, a differential of 15 cents to the branch-line point over the rate to the junction point on the main line.

Complainant's evidence, other than that relating to commercial conditions, consisted in the main of exhibits comparing the rates to Arizona points which were in effect when this proceeding was brought with rates on sugar applicable to other movements. In view of the changes in the Arizona rates as above set forth, these exhibits are less persuasive upon the present adjustment of rates than upon the rates as established prior to those changes. Upon examination of all the evidence of record, we are of the opinion and find that the rates on sugar and sirup in straight carloads from points in California to points in Arizona in effect at the time of the hearing have not been shown to be unreasonable to a greater extent than the amounts of the reductions since made. In view of the fact, however, that the carriers have to a considerable extent disregarded distance as a

factor in the making of the California-Arizona sugar rates, having established extensive blankets both as to origin and destination points, it is the opinion of the Commission that the present rates to Phoenix via the Southern Pacific and the Arizona Eastern and to Prescott via the Santa Fe are unreasonable in so far as they exceed the rates to the junction points by more than 5 cents per 100 pounds, and that rates for the future should be established upon a basis of not more than 5 cents per 100 pounds over the junction point rates.

The facts of record being insufficient to warrant any finding as to the rates on mixed carloads of sugar and sirup, none will be made.

An order will be entered in accordance with the conclusions herein stated.

24 I. C. C.

CONCENTRATION OF COTTON AT ALEXANDRIA, LA.

INVESTIGATION AND SUSPENSION DOCKET No. 558.

RATES ON UNCOMPRESSED COTTON AND COTTON LINTERS CONCENTRATED AND COMPRESSED IN TRANSIT AT ALEXANDRIA, LA.

Submitted April 25, 1915. Decided May 25, 1915.

Proposed increases in rates on cotton and cotton linters concentrated and compressed at Alexandria, La., and reshipped via respondent's line not justified. Suspended schedules must be canceled.

W. F. Dickinson and J. E. Johanson for respondent.

H. J. Fernandez for protestant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By the tariffs here under suspension respondent Chicago, Rock Island & Pacific Railway Company proposes to abolish the provision for concentration and compression of cotton and cotton linters at Alexandria, La., and reshipment therefrom, upon the basis of through rates, thus forcing shippers who desire to concentrate cotton at that point to pay the local rates on both inbound and outbound shipments. The new tariff, as first filed, was to become effective on interstate traffic December 2, 1914, but by supplemental issues the effective date was postponed until February 1, 1915. Upon protest by the Alexandria Chamber of Commerce the Commission suspended until October 1, 1915, the operation of the provision for withdrawal of the concentration rates.

Respondent publishes in its current tariff a list of all stations on its lines at which cotton compresses are located and where shipments of cotton and cotton linters may be concentrated and compressed. Both Alexandria and Ruston, La., are in this list, but by the proposed tariff Alexandria is canceled therefrom. Respondent asserted at the hearing that it is now willing to continue a provision for concentration and compression at Alexandria if it may be permitted to charge therefor 5 cents per 100 pounds in addition to the present through rates. In support of this proposal respondent's witness testified that the concentration and compression of cotton at Alexandria involves unusual expense to respondent, as the compress at that point is

located on the tracks of other companies, and in order to deliver cotton at the compress respondent is compelled to pay a switching charge of \$2.50 per car or a drayage charge of 10 cents per bale. Respondent has for years borne the entire expense of this service.

Protestant urges that an increase in the rates for shipments of cotton which include concentration and compression at Alexandria would be a discrimination against Alexandria and in favor of Ruston. The record is silent as to the relative circumstances and conditions at Alexandria and Ruston. It, however, warrants the conclusion that respondent should continue to provide for concentration and compression at Alexandria upon a basis that will be nondiscriminatory as compared with similar arrangements at other points on its lines. Respondent has a right to reasonable compensation for the service it performs, but all points should be treated alike, except in so far as the circumstances and conditions surrounding the service at different points may warrant different treatment. There is not sufficient evidence in this record to enable us to determine whether or not the proposed additional charge of 5 cents per 100 pounds for concentration and compression at Alexandria, which, as stated, was proposed at the hearing, would be justified. This proposal is in the nature of an admission that the rates which would apply if the suspended tariffs were to become effective would not be reasonable and nondiscriminatory.

Considerable evidence was offered by both parties regarding proceedings before the Railway Commission of Louisiana in connection with similar proposed tariff changes affecting intrastate shipments of cotton. Under an order of that Commission, respondent is maintaining as to intrastate traffic the rates and practices which it is here seeking to change as to interstate traffic. It is asserted that in those proceedings the reasonableness *per se* of the rates charged by respondent was not considered, and it appears that respondent has applied for a rehearing, making a special plea for such consideration. In the instant case respondent filed a statement purporting to show that for several years past it has sustained an annual loss from its operations as a whole in the state of Louisiana. This showing alone affords no basis for determining the adequacy of the compensation received for the particular service here in question.

We are of the opinion, and find, that respondent has not sustained the burden of justifying the proposed increased rates, and an order will be entered requiring that they be canceled.

**OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY'S OWNERSHIP OF THE SAN FRANCISCO &
PORTLAND STEAMSHIP COMPANY.**

No. 7065.

**APPLICATION OF THE OREGON-WASHINGTON RAIL-
ROAD & NAVIGATION COMPANY, UNDER THE PROVI-
SIONS OF SECTION 5 OF THE ACT TO REGULATE COM-
MERCE AS AMENDED BY THE PANAMA CANAL ACT,
IN CONNECTION WITH THE OWNERSHIP OF THE SAN
FRANCISCO & PORTLAND STEAMSHIP COMPANY.**

Submitted October 12, 1914. Decided May 25, 1915.

**Upon application of the Oregon-Washington Railroad & Navigation Company,
under the provisions of section 5 of the act to regulate commerce as
amended by the Panama Canal act, for an extension of time beyond July
1, 1914, in which petitioner may continue to operate the San Francisco
& Portland Steamship Company; Held:**

- 1. Following *Lake Line Applications Under Panama Canal Act*, 33 I. C. C., 699,
and *S. P. Co. Ownership of Oil Steamers*, 34 I. C. C., 77, a rail carrier
does not necessarily have to reach a point in order to compete for traffic
with water carriers that operate directly to that point, but such com-
petition may exist by the rail carriers participating in joint rates.**
- 2. The Oregon-Washington Railroad & Navigation Company does or may com-
pete for traffic with the San Francisco & Portland Steamship Company
within the meaning of the act.**
- 3. The operation of San Francisco & Portland Steamship Company is in the
interest of the public and of advantage to the convenience and commerce
of the people, and a continuance of such operation will neither exclude,
prevent, nor reduce competition on the route by water. The application
should be granted.**
- 4. All the rates, fares, schedules, and regulations of the San Francisco & Port-
land Steamship Company covering traffic subject to the act moved by it
in the operations considered herein must be filed with the Commission
and posted, as required by the act and the rules and regulations of the
Commission.**

**W. W. Cotton and A. C. Spencer for Oregon-Washington Rail-
road & Navigation Company.**

REPORT OF THE COMMISSION.

CLARK, Commissioner:

**This is an application under section 5 of the act to regulate com-
merce as amended by the Panama Canal act, filed June 30, 1914, by
34 I. C. C.**

the Oregon-Washington Railroad & Navigation Company, hereinafter referred to as petitioner, in which authority is sought to continue the ownership of and to operate beyond July 1, 1914, the San Francisco & Portland Steamship Company, hereinafter referred to as the steamship company.

Petitioner owns and operates a system of railways in the states of Oregon, Washington, and Idaho, and owns the capital stock of the steamship company. The steamship company operates three steamers on the Willamette and Columbia rivers and the Pacific Ocean between Portland, Oreg., and San Francisco and San Pedro, Cal., for the transportation of freight and passengers. One of its steamers sails every fifth day from San Francisco, San Pedro, and Portland. Astoria, Oreg., appears to be the only intermediate point served by the steamship company.

The issues presented for determination are: Does or may petitioner compete for traffic with the steamship company, and if so, is the existing service by water in the interest of the public and of advantage to the convenience and commerce of the people, and will a continuance thereof exclude, prevent, or reduce competition on the route by water?

Petitioner urges that it is not, and can not be, in competition with the steamship company, as its line does not reach any point served by the steamship company other than Portland, and the steamship company is but an extension of its rail service from Portland to San Francisco and San Pedro.

This presents the question of whether or not a rail carrier may compete for traffic with steamers owned by it at a point not reached by its rail line. We held in *Lake Line Applications Under Panama Canal Act*, 33 I. C. C., 699, and in *S. P. Co. Ownership of Oil Steamers*, 34 I. C. C., 77, that a rail carrier by participating in joint through rates from or to a point not reached by its rails in fact serves that point, and may compete with its steamers operating direct to such point. From an examination of the tariffs on file with us, we find that petitioner participates in joint rates and fares with other rail carriers between points on its line and San Francisco and San Pedro. Following our decisions in the cases just cited, we are of the opinion, and find, that by participation in joint rates with other rail carriers petitioner serves San Francisco and San Pedro and competes for traffic with its steamers operating to those points.

The only joint rates with rail lines published or concurred in by the steamship company apply via Portland. These rates are on file with us and are mainly in connection with petitioner, but are applicable also on traffic destined to or from points on the Northern Pacific Railway and the Chicago, Milwaukee & St. Paul Rail-

way, via petitioner's line, through Wallula, Wash., and Plummer, Idaho, and also to or from points on the Oregon Short Line Railroad and the Great Northern Railway. It has no joint rates with the Spokane, Portland & Seattle Railway Company. It does not attempt to control the routing beyond Portland on any traffic billed thereto for other points.

The steamship company handles annually about 215,000 tons of freight, of which one-third moves northbound and two-thirds southbound. The tonnage southbound is principally news print paper, grain products, and canned goods. Its rates in each direction are, as a rule, lower than those via the rail lines.

The passenger traffic is a very important part of the steamship company's business. It carries about 55,000 passengers annually. It participates in joint transcontinental fares with practically all rail lines entering Portland, San Francisco, or San Pedro. Its fare between Portland and San Francisco, including meals and berth, is \$4 less than the fare via the direct rail line.

Several independent water-line companies and a number of independent boats operate between Portland, San Francisco, and San Pedro, participating in both passenger and freight traffic. From Portland these boats are loaded principally with lumber, but northbound they handle general cargo. This probably accounts for the steamship company's tonnage being heavier southbound than northbound, as it carries but little lumber. The independent boats operating north of San Francisco maintain no regular service or fixed scale of rates. Their charges are somewhat less than those of the steamship company. South of San Francisco, in addition to the boats just mentioned, the steamship company is in competition with the Pacific Navigation Company, which owns and operates two steamers, the *Yale* and the *Harvard*, between San Francisco and San Pedro.

The uncontradicted testimony, including that of witnesses other than officers of petitioner or of the steamship company, is that the service of the steamship company is more satisfactory and dependable than that of any independent boat or boat line operating to and from Portland; that it is being operated in the interest of the public, is of advantage to the convenience and commerce of the people, and that a continuance of such operation will neither exclude, prevent, nor reduce competition on the route by water. No objection to such continued operation appears.

We are of opinion, and find, that the ownership and operation of the steamship company by petitioner is in the interest of the public and of advantage to the convenience and commerce of the people, and that a continuance of such ownership and operation will neither exclude, prevent, nor reduce competition on the route by water. The

petition will be granted, subject to such further order or orders as may hereafter be entered by the Commission.

All the rates, fares, schedules, and regulations applicable to the transportation by the steamship company of traffic subject to the act moved by it in the operations considered herein, not now on file, must be filed with the Commission and posted, as required by the act to regulate commerce and the rules and regulations of the Commission, effective on or before August 1, 1915.

Certain statements appearing in the petition and record show that the Oregon Short Line Railroad Company owns practically all the stock of petitioner and also owns 50 per cent of the capital stock of the San Pedro, Los Angeles & Salt Lake Railroad Company, a line operating between Los Angeles, Cal., and Salt Lake City, Utah. Certain arguments are presented to show that the Oregon Short Line, through its ownership of the San Pedro, Los Angeles & Salt Lake Railroad Company, does not and may not compete for traffic with the steamship company.

The application herein considered is filed only on behalf of the Oregon-Washington Railroad & Navigation Company, and the Oregon Short Line is not before us with any petition for relief from the provisions of the act as amended by the Panama Canal act. Nothing said herein, therefore, is to be construed as a finding that the Oregon Short Line Railroad Company's interest in and operation of the steamship company through petitioner is not in violation of section 5 of the act.

An appropriate order will be entered.

34 I. C. C.

TRANSIT RATES ON LOGS AND STAVES AT ALEXANDRIA, LA.

INVESTIGATION AND SUSPENSION DOCKET No. 547.

RATES ON LOGS, ROUGH STAVES, AND STAVE BOLTS MANUFACTURED IN TRANSIT AT ALEXANDRIA AND OTHER STATIONS IN LOUISIANA.

Submitted April 4, 1915. Decided May 25, 1915.

Proposed withdrawal of milling-in-transit rates on logs, rough staves, and stave bolts at points in Louisiana not found to have been justified. Tariff under suspension ordered canceled.

F. H. Wood, Denegre, Leovy & Chaffe, and L. F. Daspit for respondents.

H. J. Fernandez for protestant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Respondents, Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company, by supplement No. 1 to I. C. C. No. 2819-B, here under suspension until September 30, 1915, propose to withdraw, effective November 30, 1914, their net transit rates on logs, rough staves, and stave bolts when manufactured at points in Louisiana and reshipped via respondents' lines beyond the state.

Respondents do not reach Alexandria via their own rails, but the Morgan's Louisiana & Texas Railroad operates under trackage rights over the Texas & Pacific Railway from Cheneyville, La., a distance of 23.6 miles. The protestant is the Chamber of Commerce of Alexandria. The witnesses for protestant were principally lumber dealers at that point who own timberland along the lines of respondents and of other carriers in Louisiana. Rates are stated herein in cents per 100 pounds.

Practically since 1910 respondents, as well as other carriers serving Alexandria, have maintained net transit rates on logs, rough staves, and stave bolts much lower than the rates on forest products and lumber. The present net rates are approximately 40 per cent of the lumber rates. The regular forest products rates are assessed on the raw material, but when the manufactured article to the extent

of one-third the weight of the raw material is shipped out via respondents' lines, a refund to the basis of the net rates is made on the inbound material.

A statement in the record purporting to show respondents' different transit tariffs since 1910, applicable to these commodities, is not entirely accurate. An examination of the tariffs on file with us discloses that there are now in effect two of respondents' tariffs naming net rates on logs from certain points to Alexandria.

Respondents' I. C. C. No. 2518-B, effective as to intrastate traffic February 13, 1910, and on interstate traffic April 13, 1910, names net rates in dollars and cents per car on logs, rough staves, and stave bolts to Alexandria and other milling points in Louisiana. In supplement No. 7, effective July 28, 1912, the application of the net rates on rough staves and stave bolts, but not on logs, was restricted to intrastate shipments, no reference being made to any other tariffs for future rates. In supplement No. 8, effective October 3, 1912, the intrastate rates on rough staves and stave bolts were canceled, and for future rates reference was made to I. C. C. No. 2726-B, effective the same date. This latter tariff names net distance rates on logs, rough staves, and stave bolts, with no restriction as to interstate or intrastate movement, and remained in force until July 22, 1913, when it was canceled by I. C. C. No. 2765-B, which makes no transit provision for logs and limits the application of the net rates on rough staves and stave bolts to hauls of 60 miles and under. Effective September 10, 1913, this tariff was superseded by I. C. C. No. 2776-B, which restores net rates on logs and names the same net rates on logs, rough staves, and stave bolts. These rates have been brought forward in succeeding issues and are now carried in I. C. C. No. 2819-B, which the supplement under suspension proposes to cancel. It will thus be seen that from certain points the net rates on logs contained in I. C. C. No. 2518-B are still in force, while the net distance rates named in I. C. C. No. 2819-B, which are lower, are also in effect.

It has evidently been assumed by both protestant and respondents that the net rates on logs in I. C. C. No. 2518-B have been canceled. This case will, however, be considered as if that were the fact.

The following table shows the present net distance rates on logs, rough staves, and stave bolts, also the rates on forest products and lumber, which would be applicable on the commodities here in question if the net rates are canceled:

Distance.	Present rate.	Lumber rate.
	Cents.	Cents.
25 miles and under.....	2	5 to 6
26 miles and over 25.....	2½	6 to 6½
75 miles and over 20.....	3	6½ to 7½

In justification of the proposed cancellation respondents urge that there is no reason for the maintenance of transit rates on these commodities at Louisiana points; that the proposed cancellation is in conformity with the views of the Commission in that flat rates will be restored, and that the present net rates are unremunerative.

In support of the first proposition it is stated that logs, rough staves, and stave bolts originate near the milling points, and for this reason there is no occasion to equalize manufacturing points, as is the case in other transit arrangements. Protestant contends that owing to the scattering growth of hardwood, which furnishes the raw material, it is necessary to operate mills at central points. There is a very substantial movement of the raw material to Alexandria.

Whatever may be the theory of transit provisions and the Commission's attitude on the general question of the propriety and practicability of such provisions, especially with reference to flat rates, a withdrawal of such arrangements can not be sanctioned without the establishment of reasonable and nondiscriminatory rates and practices in lieu thereof.

Coming now to the question of whether or not the present rates are unremunerative. As Alexandria is located at the end of a branch line of the Morgan's Louisiana & Texas Railroad, any milling-in-transit arrangement maintained at that point by this carrier necessarily involves a back-haul service. This is an extra expense, and it is said that it would be more profitable to haul the logs direct to New Orleans. The net revenue under the present rates on three cars of logs milled at Alexandria, originating at a point 50 miles distant, added to the revenue on one car of the manufactured product from Alexandria to New Orleans, would be less than the revenue on three cars of logs shipped direct from the same point of origin to New Orleans. Assuming that if the proposed cancellation is allowed to become effective, the logs now moving to Alexandria would move to New Orleans, and that respondents' revenue would be correspondingly increased, this fact alone does not justify a cancellation of the present rates if the proposed rates are not reasonable and free from unjust discrimination.

The average haul of logs, rough staves, and stave bolts from points on the lines of respondents to Alexandria is about 47 miles. For this distance, under the present rate of $2\frac{1}{2}$ cents and minimum weight of 50,000 pounds, the earnings per ton-mile would be 1.1 cents and the per car earnings \$12.50, as compared with 2.5 cents per ton-mile and \$30 per car under the proposed rates. The present net rates are practically the same as those of the other lines reaching Alexandria, but they are lower than the rates that were in effect via respondents' lines between October 3, 1912, and July 22, 1913.

Respondents have introduced no evidence to show that the proposed increased rates are reasonable, and very meager testimony to show that the present rates are unremunerative. Practically their entire argument is directed in support of the contention that they have a right to cancel this transit arrangement at Louisiana points. This contention has been disposed of. The record affords no basis for a finding that the present rates are unreasonably low.

On brief, respondents assert that the Commission is without power to order a carrier to either install or continue a milling-in-transit arrangement except for the purpose of removing discrimination. If we were to accept this view of the limitation of the Commission's power, which we do not, this case falls clearly within the admitted jurisdiction of the Commission, as the record shows that unjust discrimination would result if the suspended tariff were to become effective.

Under a tariff effective November 8, 1913, published by order of the Railroad Commission of Louisiana, respondents are maintaining intrastate net rates applicable on shipments of logs, rough staves, and stave bolts to be manufactured at Alexandria and Port Barre, La., to be reshipped via their lines, which are identical with the rates now in effect on interstate traffic. Respondents "would be glad to see the milling-in-transit privilege abolished in state traffic, but local conditions at present prevent." They insist, however, that the maintaining of these state rates will not result in discrimination, for the reason that all intrastate traffic will be treated alike, and that the interstate application of all transit arrangements on these commodities at points in Louisiana will be canceled if the tariff under suspension is allowed to become effective. We can not accept this theory of discrimination, nor is that view supported by the *Shreveport case*, 234 U. S., 342, to which respondents refer.

Under the suspended tariffs interstate shipments of forest products manufactured and reshipped would be at a decided disadvantage in rates. The resulting situation would be similar to that considered in *Keogh v. M., St. P. & S. Ste. M. Ry. Co.*, 26 I. C. C., 73. In that case a manufacturer of excelsior and flax tow at St. Paul, Minn., secured his supplies of material from points in Wisconsin. His principal competitors were located at Rice Lake, Cameron, and other points in Wisconsin, also reached by the defendant's line. Intrastate rates on the raw material to those points were much lower than the interstate rates which the complainant was charged to St. Paul. The interstate rates were found to be unjustly discriminatory, citing *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31.

The question was again considered in *Carroll, Brough & Robinson v. A., T. & S. F. Ry. Co.*, 31 I. C. C., 466, in which undue discrimination was found to exist as between intrastate rates from Galveston to Texas points and interstate rates from Galveston to Oklahoma City, Okla.

The cases cited involved complaints against existing rates. In the instant case we are asked to disapprove a tariff not yet in effect on the ground that it would result in unjust discrimination. Respondents contend that "discrimination must be found as a matter of fact and not as a matter of inference," and assert that there is no proof that the maintenance of the transit rates upon intrastate traffic would result in undue discrimination against interstate shippers. We think that the facts of record warrant a finding that unjust discrimination against interstate shippers would result if the suspended tariff were to become effective, but, be that as it may, we find that respondents have not sustained the burden of showing that the proposed rates would be reasonable and free from unjust discrimination.

From all the facts and circumstances of record we are of the opinion that the respondents have not justified the proposed increased rates, and the tariff under suspension must be canceled on or before August 1, 1915. Such an order will be entered.

Respondents should at once correct the tariff error to which we have referred.

34 I. C. C.

SOUTHERN PACIFIC COMPANY'S STEAMBOATS ON THE SACRAMENTO RIVER.

No. 6591.

**APPLICATION OF THE SOUTHERN PACIFIC COMPANY
AND THE CENTRAL PACIFIC RAILWAY COMPANY,
UNDER THE PROVISIONS OF SECTION 5 OF THE ACT
TO REGULATE COMMERCE AS AMENDED BY THE
PANAMA CANAL ACT, IN CONNECTION WITH THE
OPERATION OF A BOAT LINE ON THE SACRAMENTO
RIVER AND CONNECTING WATERS.**

Submitted November 7, 1914. Decided May 25, 1915.

Upon application of the Southern Pacific Company and the Central Pacific Railway Company, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which petitioner may continue to operate boats on the Sacramento River and connecting waters; Held:

- 1. That the Southern Pacific Company does compete for traffic with its boat line in its operation on the Sacramento River and connecting waters within the meaning of the act.**
- 2. That the operation of the boat line is in the interest of the public and of advantage to the convenience and commerce of the people; that its continued operation by petitioner will neither exclude, prevent, nor reduce competition on the route by water, and that the application should be granted.**
- 3. That the rates, fares, schedules, and regulations of the boat line on the Sacramento River and connecting waters, governing traffic subject to the act, moved by it in its operations considered herein must be filed with the Commission and posted as required by the act and the rules and regulations of the Commission.**

***F. H. Wood and H. C. Booth* for Southern Pacific Company and Central Pacific Railway Company.**

***Seth Mann* for San Francisco Chamber of Commerce.**

***G. J. Bradley* for Merchants and Manufacturers' Association of Sacramento.**

***M. M. Jones* for Oakland Chamber of Commerce.**

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This is an application, filed February 14, 1914, by the Southern Pacific Company and the Central Pacific Railway Company, under

section 5 of the act to regulate commerce as amended by the Panama Canal act, in which authority is sought to continue the operation beyond July 1, 1914, of a line of steamers on the Sacramento River and connecting waters.

The Southern Pacific Company, hereinafter referred to as petitioner, a Kentucky corporation, controls and operates a system of railroads, including lines in the state of California. The Central Pacific Railway Company, an Idaho corporation, owns railroad lines which are under lease to petitioner.

Petitioner owns a majority of the stock of the Central Pacific Railway Company, which owns six steamboats, hereinafter referred to as the boat line, which are leased to and operated by petitioner between San Francisco and Sacramento, Cal., on the Sacramento River and connecting waters.

The issues presented are: Do or may petitioner's rail lines compete for traffic with the boat line, and if so, will the continued operation of the boats by petitioner be in the interest of the public and of advantage to the convenience and commerce of the people and neither exclude, prevent, nor reduce competition on the route by water?

Petitioner operates railroad lines between Sacramento and San Francisco. It also operates a branch line from Sacramento to Walnut Grove, Cal., a point on the river 42 miles from Sacramento. This branch also reaches Hood, Cal., another point on the river. Both petitioner and the boat line serve the four points above mentioned, participating in both passenger and freight traffic. To some extent the boat line participates with the rail line in through carriage to and from points beyond Sacramento. Petitioner has on file with us passenger tariffs which afford optional routes via the steamers or the railroad between Sacramento and San Francisco. Petitioner admits that its rail line competes with the boat line between the points above referred to. We find, therefore, that petitioner, through its ownership in the Central Pacific Railway, does compete with the boat line within the meaning of the act.

We come now to consider whether or not the continued operation of the boat line by petitioner will be in the interest of the public and of advantage to the convenience and commerce of the people, and will neither exclude, prevent, nor reduce competition on the route by water.

For the purposes of this case the river and the Sacramento Valley may be divided as above and below Sacramento. The boat line operates only below Sacramento. This part of the valley is highly productive and is devoted largely to the growing of vegetables and deciduous fruits, which are produced in great quantities and marketed extensively in the east. This productive area is a narrow strip lying on both sides of the river between Clarksburg and Rio Vista, Cal.,

55 miles from Sacramento. The boats engage principally in the handling of freight and passengers from and to this fruit and vegetable belt, which, owing to topographical conditions, is, except to a very limited extent, inaccessible to any railroad line and is dependent almost entirely upon river service.

The six steamboats in question are the *Apache*, *Modoc*, *Navajo*, *Fruto*, *Cherokee*, and *Iroquois*. The *Iroquois* operates exclusively between a junction with the rail lines of petitioner and the navy yard at Mare Island in the carriage of government freight, being merely an extension of the rail line, performing no service which the rail line could perform, and so bound by contract with the government that permission from the government is required before it can be assigned even temporarily to any other service. The *Apache* and *Modoc* together furnish a daily service, except Sundays, between San Francisco and Sacramento, leaving at noon and arriving early the next morning, handling passengers and freight between the termini and making all regular intermediate landings, of which there are 10, and in addition stopping at such of the 130 bank landings between Rio Vista and Clarksburg as may be necessary to receive or discharge freight or passengers. The *Navajo* is a fast passenger steamship also carrying freight, leaving San Francisco every morning and Sacramento every night. The service by this boat from Sacramento is popular, as it enables a traveler to be in San Francisco in the morning for business. It also appears that the operation of the boat is of convenience to Sacramento shippers who desire a dependable service to San Francisco in connection with further transportation beyond, particularly by ocean steamer, and to farmers and growers north of Sacramento who desire a dependable arrival in San Francisco in time for market, as there is no delay in terminal yards through which a car handled by rail must pass, or in crossing the bay.

The *Cherokee* and *Fruto* are engaged exclusively in a special service during the fruit season, which extends from June to September. Out of the narrow strip on each side of the river above referred to 1,800 cars of deciduous fruit were shipped in 1913 to the east, of which but 115 were shipped from Walnut Grove and Hood combined. Just before the beginning of the fruit season the *Fruto* distributes box shocks from Sacramento to the bank landings along the river and along Steamboat slough, an arm of the river which connects with the river at both ends, leaving an island upon which a considerable portion of the fruit district is located. As the crops mature this boat performs a daily pick-up service along the river and Steamboat slough, stopping at each bank landing where any fruit is brought and running on a schedule so arranged as to reach Sacramento early in the morning. As the season advances and shipments

become too heavy for one boat to handle, the *Cherokee* is put in service and the two boats perform a daily pick-up service, one picking up shipments below Steamboat slough and the other on Steamboat slough and that part of the river above its mouth. The schedule is so arranged that each boat leaves the lower end of its district shortly after noon, so that all the fruit may arrive at Sacramento at the same time in the morning.

The fruit is shipped to Sacramento under local charges, consigned to various shipping firms and is there distributed through the medium of distributing organizations. It moves from Sacramento to eastern markets on new bills of lading, and there are no restrictions with respect to the outbound routing of shipments brought in by the boat line.

At San Francisco carload freight is received from and delivered to any steamship or railroad company without extra charge, irrespective of whether it originates on or is destined to points on petitioner's line. Less than carload freight is handled over the steamship docks at San Francisco. Transfer to or from rail lines is at the expense of the shipper or the rail line, whether the rail line is the Southern Pacific or some other.

A report of the chief of engineers of the United States Army for the fiscal year ended June 30, 1913, shows that there were 149 craft of various kinds operating on the Sacramento River exclusively, and 167 operating in part on the Sacramento River and partly on other rivers, making a total of 316 boats on the Sacramento River, of which petitioner operates 6. The same report shows that for the year ended December 31, 1912, 202,015 passengers were carried by reporting lines, of which petitioner's boats carried 117,000. During the calendar year ended December 31, 1913, petitioner's boats carried 81,421 passengers. The tonnage carried by the four principal transportation companies on the Sacramento River for 1912 was 477,292 tons, of which petitioner's boats carried 109,097 tons, or a little less than one-fourth.

There are several regular boat lines, also several irregular lines, in competition with that operated by petitioner. The uncontradicted testimony of witnesses for petitioner and for shippers is that the service of petitioner's boat line is most dependable; that it is operated in the interest of the public, and is of advantage to the convenience and commerce of the people, and that its continued operation will neither exclude, prevent, nor reduce competition on the route by water.

The boat line has been operated for more than 30 years. In so far as local traffic in California is concerned, its rates are subject to the jurisdiction of the California commission. The service of the steamers is largely local. Under the California statute only regular lines are required to file their rates with the commission.

No one appeared in opposition to the continued operation by petitioner of the boat line in question. The San Francisco Chamber of Commerce appeared, by its attorney, not in opposition to the petition, but with the idea, as far as possible, of eliciting facts for the information of the Commission and in support of the general policy of the chamber of commerce in accordance with the act of Congress that railroads should not own competing water lines. The Merchants & Manufacturers' Traffic Association of Sacramento by its manager appeared in support of the petition. The Oakland Chamber of Commerce also appeared, but offered no testimony.

Upon consideration of all the facts of record, we are of opinion, and find, that the continued operation by petitioner of the boat line will be in the interest of the public and of advantage to the convenience and commerce of the people and will neither exclude, prevent, nor reduce competition on the route by water on the Sacramento River and connecting waters. Petitioner's application to continue such operation will be granted, subject to such further order or orders as may hereafter be entered by the Commission.

All the rates, fares, schedules, and regulations applicable to the transportation by petitioner's boats on the Sacramento River and connecting waters of traffic subject to the act moved by it in its operations considered herein must be filed with the Commission and posted, as required by the act to regulate commerce and the rules and regulations of the Commission, effective on or before August 1, 1915.

An appropriate order will be entered.

84 I. C. C.

No. 5574.
PENNSYLVANIA PARAFFINE WORKS
v.
PENNSYLVANIA RAILROAD COMPANY

No. 5574 (Sub-No. 1).
CREW-LEVICK COMPANY
v.
SAME.

Submitted March 11, 1914. Decided May 11, 1915.

1. This Commission has the power to require carriers to furnish all necessary equipment, both ordinary and special, upon reasonable request. *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, 33 I. C. C., 52.
2. The question of what is a reasonably adequate car supply is an administrative one of which this Commission alone can take original jurisdiction.
3. A shipper's request for cars especially suited for the transportation of his products would not be reasonable if the cars must be prepared for shipment in a manner which is peculiarly within the technical knowledge of men connected with that industry, or if the movement of the commodity is a dangerous operation which can be safely performed only by men engaged in its production.
4. The shipment of petroleum products in tank cars does not call for such technical knowledge as would render unreasonable complainants' request that defendant furnish these cars.
5. From the standpoint of economy to the shipper, to the consumer, and the railroad, tank cars are the only proper cars to use in the shipment of petroleum.
6. One of the tests to be relied upon in determining the reasonableness of a shipper's request for cars is to be found in the volume of his shipments in the past, due allowance being made for the growth of his business.
7. All cars used by carriers, whether they be owned by the carriers themselves or leased from private car lines or from shippers, must be distributed without discrimination.
8. Whatever transportation service or facility the law requires a carrier to supply, it has a right to furnish. *Atchison Ry. Co. v. U. S.*, 232 U. S., 199; *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106.
9. Defendant required to furnish a sufficient number of tank cars.

G. E. Spring and C. D. Chamberlin for complainants.
Henry Wolf Bikelé for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

These complaints, which are identical, are brought against the single defendant, the Pennsylvania Railroad Company. They allege

that the defendant has refused to furnish tank cars upon the reasonable request of complainants, in violation of the act to regulate commerce. They also allege that complainants have been damaged by unreasonable delays in the return empty of complainants' privately owned tank cars, and by defendant's unfair determination of damages to such cars, outside of ordinary wear and tear. Complainants pray for an order requiring defendant to furnish cars, and for such further order as the Commission may deem necessary.

Complainants are refiners of crude oil. The Pennsylvania Paraffine Works has its office and refinery at Titusville, Pa., and the Crew-Levick Company operates the Glade Oil Works at Warren, Pa. Both complainants are corporations, organized under the laws of Pennsylvania, and have been engaged in refining oil for over 20 years. For the past two years the Pennsylvania Paraffine Works has been refining about 20,000 barrels of crude oil per month and the Glade Oil Works from 15,000 to 16,000 barrels per month. During the 10 months of 1913 for which results are shown in tables submitted by complainants the shipments of the Pennsylvania Paraffine Works averaged over 750,000 gallons and the shipments of the Glade Oil Works over 500,000 gallons per month. Of the shipments made by the Pennsylvania Paraffine Works 91 per cent moved in tank cars, $1\frac{1}{2}$ per cent in barrels loaded in cars other than tank cars, and $7\frac{1}{2}$ per cent in pipe lines, while of the shipments made by the Glade Oil Works 86.8 per cent moved in tank cars, 4.7 per cent in barrels, and 8.5 per cent in pipe lines.

Approximately 250,000,000 barrels of crude oil are produced annually in the United States, and there are in the neighborhood of 100 companies engaged in refining oil. For a long time the bulk of the refined product has been shipped in tank cars, and at present 91 per cent of the refined oil produced in this country is transported in this manner. It was testified that defendant has been using such cars for the shipment of oil for over 25 years.

Complainants have ample sidings and connections with defendant's railway both at Titusville and at Warren for the delivery by defendant and the loading of tank cars. The tank cars now in common use for the transportation of oil have a capacity of from 6,000 to 12,000 gallons each. The cars are so constructed that they may be rapidly loaded at the refinery, and jobbers and dealers in the refined product throughout the country have the proper and necessary facilities for unloading tank cars by gravity at their various stations. Even the country grocer has his tank, which is filled from tank wagons. The tank wagons are filled from the oil dealer's storage tank, which in turn is filled from tank cars.

The only other method of transporting oil by rail is in barrels or similar containers loaded in box cars. However, the cost to the

purchaser of oil transported in barrels is from $3\frac{1}{2}$ to $3\frac{3}{4}$ cents per gallon above the cost when transported in tank cars. This higher cost is due to the additional weight upon which freight charges must be paid, depreciation in value of the barrels when used, greater waste than when transported in tank cars, and additional expense of handling and delivering. The freight charges alone, it was testified, are increased approximately 25 per cent by the added weight of the barrel. The price of lubricating oil is from $2\frac{1}{2}$ to 22 cents per gallon f. o. b. cars at complainants' works; that of burning oil from $4\frac{1}{2}$ to $5\frac{1}{2}$ cents per gallon, and of gasoline from $9\frac{1}{2}$ to $17\frac{1}{2}$ cents. It is evident that the addition of $3\frac{1}{2}$ cents per gallon to the cost of oil when transported in barrels makes that method of transportation prohibitive and that the refusal of the railroads to furnish an adequate supply of tank cars would tend to drive out of business refiners who are unable to supply themselves with enough tank cars to move their products. Even witnesses who appeared in defendant's behalf admitted that tank cars are an absolute necessity for the transportation of refined products, and that their use effects an economic gain. Moreover, shippers are required to pay freight on the full shell capacity of tank cars, and the carload revenue derived from the movement of products in tank cars compares favorably with the revenue derived from movements in other cars. The transportation of oil in tank cars is desirable also from a purely transportation standpoint.

The bulk of the movement of refined oil is in tank cars owned by the shippers. In 1887 the Pennsylvania Railroad acquired 1,308 tank cars, some of which have subsequently been sold to independent refineries. Defendant now owns 499 tank cars, all that remain of those purchased in 1887 and 482 of which are furnished to shippers of oil located on its lines. The other railroads east of the Mississippi River own, in the aggregate, only 303 tank cars. The privately owned tank cars east of the Mississippi aggregate about 27,700, and the total number of tank cars owned in the United States was given as approximately 40,000.

At present the Pennsylvania Paraffine Company owns 54 tank cars and the Crew-Levick Company 57 tank cars. Complainants allege that these cars, together with the cars furnished by defendant, are not sufficient to meet the requirements of their business. It was testified that during the past five or six years complainants have made daily inquiry for the delivery of cars to their refineries and that a formal order for cars has constantly been on file in defendant's offices at Titusville and at Warren. On March 9, 1910, in a letter to defendant's superintendent at Buffalo, the Pennsylvania Paraffine Company demanded that in the future defendant furnish the necessary tank cars for the transportation of complainants' product. On

March 30 the defendant's superintendent replied that complainants' request for tank cars actually needed for intended shipments would receive due consideration, and would be complied with to such extent as the tank-car equipment of the company would permit. In fact, however, defendant did not comply with complainants' request further than to furnish cars in about the same proportion as before. Subsequent to making this request the Pennsylvania Paraffine Company purchased five and the Crew-Levick Company two additional tank cars, the former as late as September, 1913. On November 11, 1912, shortly prior to bringing this complaint, each complainant served defendant with a formal notice requesting it to furnish a sufficient number of tank cars to ship, respectively, 450,000 gallons of oil per month from the Pennsylvania Paraffine Company's refinery at Titusville and 600,000 gallons per month from the Glade Oil Works at Warren. To this request defendant's answer, through its general manager, was as follows:

We beg to say that the railroad company is not prepared to increase its present tank-car equipment, but is prepared to transport the commodity, when properly contained in barrels or other similar containers, at rates that are fair and reasonable and nondiscriminatory.

Thereafter complainants brought this action.

Complainants' customers are in the main located in official classification territory. Complainants assert that defendant's line is the most direct route to nearly all of the destinations to which they are accustomed to ship, and that with fair service on defendant's part substantially all of the products of complainants' refineries would be transported over its line.

Complainants have of late been making a large part of their shipments over the Dunkirk, Allegheny Valley & Pittsburgh Railroad and the New York Central lines, although these carriers have no tank cars of their own and their lines form, in many instances, a much more circuitous route than the lines of the Pennsylvania Railroad. Complainants give as their reason for preferring the indirect route of the New York Central lines unfair settlement by the Pennsylvania of damages to complainants' private cars, frequent and unnecessary delay in delivering their shipments and returning empties, and the failure of defendant to report the location of complainants' cars. As regards the last point, the testimony shows that defendant is now giving the service desired, but as a result of the others complainants allege that they have suffered great pecuniary loss. It is stated that the service of the New York Central lines is much better in these respects. Complainants allege that the private ownership of cars by shippers is bound to result in the unfair and unjust determination of damages to shippers' cars occasioned by rough usage, wrecks, and accidents which by the master car builders' rules should be borne by

the railroad, and in long and unnecessary delays in the return of empties.

Complainants state further that the cost of maintaining their privately owned tank cars far exceeds the rentals received from the railroads. They are also required in some states to pay taxes upon the cars they own. These expenses would not fall upon the shipper if the railroads were required to furnish the necessary cars. Complainants state that the reason they originally provided themselves with tank cars of their own was that at that time the railroads could not be compelled to furnish this equipment, but that now, under the amended law, this duty has been specifically declared, and this Commission has been given the power to enforce it.

While complainants' prayer is that defendant be required to furnish all the equipment needed for the transportation of their products; they allege that even if their own cars be taken into consideration the additional equipment has not been sufficient to meet the requirements of their business.

Defendant emphatically denies this to have been the case and contends that in the past three years it has furnished complainants with all the tank cars to which they were entitled. While exhibits introduced in evidence indicate that during the past few years defendant has supplied practically all the cars ordered by complainants, there have at times been long delays in filling the orders. The most extreme example of delay was in the case of an order of the Pennsylvania Paraffine Company for 15 tank cars on October 2, 1912, which was filled by the delivery of 1 car on each of the following dates: October 4, 5, 8, 14, 15, and 16, 1912; November 4, 5, and 12, 1912; December 10, 21, and 31, 1912; January 16, 1913; and March 10 and 11, 1913. A delay of over five months in filling an order for cars obviously shows that at least during that time defendant's equipment did not meet the reasonable demands of complainants. The evidence shows orders for cars to have frequently been given in excess of complainants' immediate needs, in expectation that defendant would fill them as rapidly as possible in the ordinary course of its business. Defendant also showed that tank cars furnished complainants have at times been refused, although it does not appear that such refusal was always made because complainants at the time had no further shipments to make. Although the testimony does not show that the tank cars furnished by defendant plus complainants' privately owned cars have at all times been insufficient to meet the requirements of complainants' business, it can nevertheless be safely stated that at times this has been the case.

It is plain that the cars furnished by defendant constitute but a small proportion of those required for the transportation of complainants' products. During the 12 months from November, 1912,

to October, 1913, inclusive, the Pennsylvania Paraffine Company shipped in all 1,161 carloads of refined products, of which 821 were shipped over the New York Central lines and 340 over the Pennsylvania Railroad. Of the total 998 carloads an average of $83\frac{1}{2}$ carloads per month was shipped in complainants' private cars, and 163 carloads, an average of $13\frac{7}{8}$ per month, in tank cars furnished by the Pennsylvania Railroad. During the same period the Glade Oil Works shipped 992 carloads, 535 over the New York Central lines and 457 over the Pennsylvania Railroad. Of these, 844 carloads, or an average of $70\frac{1}{2}$ per month, were shipped in tank cars belonging to the Crew-Levick Company, and 148 carloads, an average of $12\frac{1}{2}$ per month, in Pennsylvania Railroad Company cars. It is obvious that if defendant is excused from its obligation to provide the equipment necessary to move complainants' products by reason of complainants having in the past provided cars of their own, complainants would always be compelled to supply whatever additional cars were from time to time needed to take care of increases in their business, even though complainants no longer desired to maintain cars of their own. Defendant has refused to increase its supply of tank cars. The question to be decided is not whether the cars supplied by defendant together with those owned by complainants are sufficient to meet complainants' demands, but rather whether complainants may retire from the business of furnishing tank cars for the transportation of oil and henceforth rely entirely upon the railroads to provide this equipment, or whether complainants must in the future continue to take care of the increasing demands of their business by buying additional tank cars.

Defendant argues that the act to regulate commerce neither imposes upon carriers the obligation to buy additional tank cars nor invests the Commission with power to require the purchase of additional tank cars.

For the jurisdiction of the Commission over the present controversy, complainants rely upon the following portions of the act to regulate commerce as amended in 1906 and 1910. Section 1 of the act provides that—

* * * the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, * * *.

Section 12 of the act provides:

* * * the Commission is hereby authorized and required to execute and enforce the provisions of this act * * *.

and section 15 provides:

That whenever, after full hearing upon a complaint made as provided in section 13 of this act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

The provisions of section 1 quoted above were inserted by the amendment of 1906; those of section 12 were added by the amendment of 1889; and section 15 was given its present form by the amendment of 1910, having previously been amended in 1906. Attention is called to these amendments because under the act, as originally passed, the Commission did not have jurisdiction to require carriers to provide proper and adequate car equipment. *Scofield v. L. S. & M. S. Ry. Co.*, 2 I. C. C., 90; *Rice v. C., W. & B. Ry. Co.*, 3 I. C. C., 186; *Re Transportation, etc., of Fruit*, 10 I. C. C., 360.

The question of the Commission's jurisdiction under the amended law was not brought before us until very recently. In *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, 33 I. C. C., 52, we were asked to award damages due to a carrier's alleged failure to supply cars to certain coal mines upon reasonable request. The defendant in that case also denied the Commission's jurisdiction. We held that the question presented was properly before us on the ground that the determination of damages necessitated the prior determination of the extent to which defendant failed to comply with the duty it owed complainants to furnish cars upon reasonable request therefor, which we held to be an administrative question of which this Commission alone can take original jurisdiction.

Defendant's first argument is that it was not the intention of Congress in passing the act to regulate commerce and amendments thereto to forbid the operation of private car lines or the ownership of cars by shippers.

Defendant first calls attention to the fact that at the time of the consideration of this amendment, the private ownership of railroad cars, including tank cars used in the transportation of oil, had continued for many years and was well known to the public, to the Commission, and to Congress. Moreover, in the hearings held during 1905 and 1906 with reference to the proposed amendments to the act, this subject was brought to the direct attention of the Senate Committee on Interstate Commerce by many witnesses. Many cases of discrimination and rebates of that time occurred in connection with private car lines, and some shippers went so far as to demand that the act be so amended as to "forbid all carriers hauling cars carrying freight of any and every description that are not owned and controlled by such carriers themselves or by other carriers, bona fide such, and not created or existing for any other purpose."

After quoting several excerpts from the debates in Congress on the amendment of 1906, defendant argues that if Congress had intended to require the railroads to take over the privately owned cars or to confer upon the Commission power to promulgate such a requirement it is inconceivable that the long debate on this amendment should disclose no intimation of this purpose. The following quotation from defendant's brief clearly shows the position taken:

In view of the prevalence of the private ownership of cars, and in the light of the foregoing evidence with reference to the proceedings before the Senate committee and in Congress, it is impossible to believe that the Hepburn amendment was intended to change the degree of the obligation of the carriers with respect to furnishing the equipment for the transportation of commodities which were partly or largely transported in privately owned cars of a special description. Certainly, if the Congress of the United States had intended any change of such profound magnitude, and had intended to endow the Commission with a power which the Commission had already decided it did not have, the provisions to this end would have been much more specific and definite than the provisions on which the complainants rely.

Defendant's argument is based upon the supposition that the interpretation which complainants seek to place upon the provisions of the act under discussion, by which the jurisdiction of the Commission in the present case is sought to be upheld, would require the railroads to take over the privately owned cars or confer upon the Commission power to promulgate such a requirement. This, however, would not necessarily be the case. Section 1 of the act provides that it shall be the duty of every carrier subject to the provisions of the act "to provide and furnish" transportation, including cars, upon reasonable request therefor. This does not require the carriers' ownership of cars, but places upon them the duty to provide cars, which may be cars of their own or cars which they have secured in some other manner. The carriers, subject to the act, are to obtain and

have ready for future use "all cars and other vehicles and all instrumentalities and facilities of shipment or carriage," and furnish the same upon reasonable request. The power of the Commission to require the carriers to comply with their duty is subject only to the proviso that the request for "cars and other vehicles" and the "instrumentalities" and "facilities" of transportation shall be reasonable. Whether or not a particular request is reasonable is a matter for this Commission to decide in each particular case.

Defendant calls attention to a provision of its charter whereby it is required to permit its rails to be used as a public highway for the movement of privately owned cars. *Boyle v. P. & R. Ry. Co.*, 54 Pa., 310; *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C., 356. In the light of what has been said above, it is evident that this provision of defendant's charter in no way conflicts with granting the relief prayed for.

It is further argued by the defendant that the requirement of section 1 to furnish transportation upon reasonable request was intended to transmute into an obligation under federal law the common-law obligation of the carrier in this regard, and it is stated that there never was an obligation at the common law to supply a vehicle of a particular form or description when such form or description had no reference to the safety of transportation. Defendant states that so long as there is no unreasonableness or discrimination in the rates and so long as the carrier's equipment is adapted to the safe transportation of the goods intrusted to it, there is nothing in section 1 which in any way restricts the right of the carrier to choose and select the vehicle of transportation which it regards most satisfactory for the conduct of its business.

As bearing upon this point, it should first be stated that defendant holds itself out to transport oil in bulk. It not only publishes rates for the transportation of oil in tank cars, but owns tank cars and supplies shippers with them. It leases cars owned by companies engaged in refining oil and transports their products in those cars at the rates it publishes for the movement by rail of oil in tank cars. It certainly can not be contended that the transportation by rail of oil in bulk could be attempted safely in any equipment other than tank cars.

Whatever the obligation of the carriers may have been under the common law, the requirements of the act are plainly more comprehensive than defendant contends. It is, of course, plain that the extent of defendant's obligation at common law is not determinative of its extent under the statute.

However, in further support of its argument that the requirements of section 1 to furnish transportation upon reasonable request were

merely intended to transmute into an obligation under federal law the common-law obligation of the carrier, defendant calls attention to the safety appliance acts, which it is stated indicate that when Congress contemplates the imposition of obligations with respect to the equipment of carriers it covers the subject by careful specific rules. Defendant argues that if it had been the intention of Congress to endow the Commission with the power to require the purchase of equipment of specialized character Congress would have defined the manner in which and the extent to which this power might be exercised. Attention is also called to the Commission's recommendation, in its last report to Congress, that carriers be required to furnish steel coaches for passenger traffic, and it is argued that this is an admission of its lack of jurisdiction over matters concerning a carrier's equipment. If the Commission can require carriers to furnish tank cars for the movement of oil, defendant contends, it certainly must have jurisdiction to require them to furnish steel passenger coaches.

The attempted analogy does not exist. The power to require proper and adequate cars for the transportation of passengers, or of oil in bulk, is one thing. The power to require that such cars be of peculiar or especial design, pattern, or material is quite another thing. At common law shippers had a present remedy in the courts by suit for damages in case of a carrier's failure to perform its duty to transport safely. One of the conditions, however, which led to the passage of the act to regulate commerce and of the amendments thereto was the inability of shippers to find a present remedy in the case of rates charged for transportation of goods or regulations or practices affecting such transportation which were unjust, unreasonable, or discriminatory. And, as clearly appears from a reading of the provisions which were added by the amendment of 1906, to which reference has been made above, Congress at that time had in mind giving shippers a more adequate remedy in case the facilities for transportation were inadequate.

It is further contended by defendant that even if the act to regulate commerce declares the duty of carriers to provide special equipment it does not invest this Commission with power to require the purchase of additional cars. It is stated that while the Commission is charged with the enforcement of the act to regulate commerce its powers in cases coming up for decision after hearing on complaints, as provided in section 13, are fully defined in sections 15 and 16, which authorize the Commission—

* * * to determine and prescribe * * * the just and reasonable * * * rate or rates * * * to be thereafter observed * * * and what * * * regulation or practice is just, fair, and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall * * * conform to and observe the regulation or practice so prescribed.

Defendant contends that the present case involves no rate, regulation, or practice, arguing that if it be a practice within the meaning of the act for the carrier to furnish only 500 tank cars, it could be contended with equal reason that every detail of railroad operation is a practice within the meaning of the act. Practice, it is contended, connotes a continued method of operation and not merely a single act.

While the act does not specify that this Commission should regulate every detail of railroad operation, we are required by its terms to determine whether any rate or any regulation or practice affecting transportation is just, reasonable, and nondiscriminatory. Among other things we are required to decide whether or not in specific cases carriers have complied with the requirements of the act to furnish adequate facilities upon reasonable request. In *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C., 86, the Commission said:

* * * the words "any regulations or practices whatsoever * * * affecting such rates" are used synonymously with the words "regulation or practice in respect to such transportation;" and * * * both clauses are to be read in the widest possible sense and embrace all regulations and practices of carriers under which they offer their services to the shipping public and conduct their transportation * * *.

In *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 23 I. C. C., 417, after calling attention to the provisions of section 1, including the requirement that carriers shall furnish cars upon reasonable request therefor, the Commission said:

* * * Under section 15 as amended in 1910 the Commission is empowered to determine and prescribe what will be the just, fair, and reasonable regulation or practice which shall be thereafter followed by the carrier as to the services which the carrier is required to give under section 1.

In *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, after calling attention to the relative advantages of precooling and standard refrigeration in the movement of citrus fruits from California to eastern markets, the Commission said:

Oranges can not be moved in box cars without ventilation. Let us assume that the ventilated car had been unknown and that the entire citrus-fruit crop had moved at all seasons of the year under refrigeration. It is discovered that by the use of a car so constructed that a current of air can be forced through the oranges by the motion of the car, two-thirds of the citrus-fruit crop can be transported without the expense of refrigeration. Could the defendants under these circumstances insist that all oranges should continue to move under refrigeration and would they rest under no obligation to provide ventilated cars?

* * * This vast tonnage should be handled in the most economical and satisfactory manner, and these carriers should furnish for that movement such cars as will effectuate that purpose. They have a right to insist upon a proper compensation for supplying that equipment, but they have no right to say that old methods must continue in use and new methods held in abeyance rather than change the form of their cars.

The carrier may insist upon furnishing all the equipment which is needed for the movement of precooled shipments and might decline to use equipment furnished by the shippers, but it can not refuse to furnish proper equipment upon fair terms; * * *.

The carriers who were defendants in this case petitioned the Commerce Court to annul and set aside the Commission's order. The Commerce Court approved the findings of the Commission and dismissed the complaint, whereupon the case was appealed to the United States Supreme Court, which held, *Atchison Ry. Co. v. U. S.*, 232 U. S., 199:

Whatever transportation service or facility the law requires the carrier to supply they have the right to furnish. They can therefore use their own cars, and can not be compelled to accept those tendered by the shipper on condition that a lower freight rate be charged. So, too, they can furnish all the ice needed in refrigeration, for this is not only a duty and a right, under the Hepburn act, but an economic necessity due to the fact that the carriers can not be expected to prepare to meet the demand, and then let the use of their plants depend upon haphazard calls, under which refrigeration can be demanded by all shippers at one time and by only a few at another.

And at page 217:

Neither party has a right to insist upon a wasteful or expensive service for which the consumer must ultimately pay. The interest of the public is to be considered as well as that of shippers and carriers * * *.

In *C., R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 226 U. S., 426, after referring to the provisions of section 1 of the act requiring carriers to furnish cars upon reasonable request, the United States Supreme Court said:

Not only is there then a specific duty imposed to furnish cars for interstate traffic upon reasonable request therefor, but other applicable sections of the act to regulate commerce give remedies for the violation of that duty. * * *

Attention should also be called to the following language used by the Commerce Court in *United States v. L. & N. R. R. Co.*, 195 Fed., 88:

This court has no jurisdiction to consider the question of car distribution in advance of some action by the Interstate Commerce Commission or to determine how many cars the Southern Railway shall furnish or how many the Louisville & Nashville Railroad shall furnish for the transportation of the petitioners' coal. It is believed, however, that this court has the undoubted jurisdiction upon the facts presented by the record to issue a writ or writs of mandamus directed to these common carriers, commanding them that, so long as they establish and maintain through routes and joint rates to southeastern territory, they shall move and transport in interstate commerce the coals of the petitioners when tendered in such reasonable quantities as may be determined either by agreement with the carriers or by the Interstate Commerce Commission if they can not agree.

The United States Supreme Court has repeatedly stated that the whole scope of the act to regulate commerce shows it to have been intended that this Commission and not the courts shall pass upon administrative questions. *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*,

204 U. S., 426; *B. & O. R. R. Co. v. Pitcairn Coal Co.*, 215 U. S., 481; *Robinson v. B. & O. R. R. Co.*, 222 U. S., 506; *United States v. Pacific & Arctic Co.*, 228 U. S., 87; *P. R. R. Co. v. International Coal Mining Co.*, 230 U. S., 184; *Mitchell Coal & Coke Co. v. P. R. R. Co.*, 230 U. S., 247; *Morrisdale Coal Co. v. P. R. R. Co.*, 230 U. S., 304; *S. Ry. Co. v. Reid*, 222 U. S., 424; all of which are quoted from at length in *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, *supra*.

In *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, 440, 441, it is stated that if, under the act to regulate commerce, the courts were given jurisdiction to determine the reasonableness of rates the result would be as follows:

* * * if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed, the recognition of such a right is wholly inconsistent with the administrative power conferred upon the Commission and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed. Equally obvious is it that the existence of such a power in the courts, independent of prior action by the Commission, would lead to favoritism, to the enforcement of one rate in one jurisdiction and a different one in another, would destroy the prohibitions against preferences and discrimination and afford, moreover, a ready means by which, through collusive proceedings, the wrongs which the statute was intended to remedy could be successfully inflicted.

Can it be doubted that if the courts were required to state what demands for cars are reasonable and when a carrier's equipment is adequate a similar lack of uniformity and like confusion would result?

In *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, *supra*, we said:

Furthermore, one can not escape the conclusion that the question as to the extent to which defendant failed to comply with the duty it owed complainants to furnish cars upon reasonable request therefor is an administrative one of which the Commission alone can take original jurisdiction. This must be true unless it be the carrier's absolute duty to furnish cars at all times to the full extent of the shipper's demands. Only then would this complaint present a question like that considered in *P. R. R. Co. v. International Coal Co.*, *supra*. It may be that after the determination by the Commission of the number of cars which the defendant should have furnished and of the times when it should have furnished them the courts would have concurrent jurisdiction with the Commission of the ascertainment of the damages suffered by complainants by reason of defendant's failure to perform that duty. However, it is not a carrier's duty to furnish all cars demanded at all times. In substance section 1 provides that upon reasonable request it shall be the duty of every carrier to furnish cars. By virtue of these requirements it becomes the carrier's duty to maintain a reasonably adequate car supply, and the question of what is a reasonably adequate car supply is just as much an administrative one as the question of what is a reasonable rate. The legal sufficiency of defendant's car supply can not be definitely fixed by the statute. It is a question which, using the language of the court in the *Mitchell* case, "involves a consideration and comparison of many and various facts and calls for the exercise of the discretion of" this tribunal.

One further argument advanced by defendant should be considered in connection with the question of jurisdiction. Defendant states that to require the carrier to purchase additional equipment may involve a demand that the carrier increase its capital account, and the power of the Commission can only properly be determined by a consideration of its right to require such action on the part of the railroads. But such an objection is not sound, because the question of the financial ability of any carrier would be a matter for consideration in judging of the reasonableness of the request for special or additional equipment and would be one of the matters considered by the Commission in judging the particular case when the same arises.

The jurisdictional question disposed of, we will now turn our attention to the defendant's contention that even if the act to regulate commerce should be held to invest this Commission with power to require carriers to purchase additional cars, the evidence in this proceeding does not justify the Commission in exercising this power.

It is contended that the circumstances attending the transportation of commodities in tank cars are so peculiar as to constitute this a class of equipment which should be furnished by the shippers themselves. Private ownership of tank cars prevails, particularly east of the Mississippi River. While it is recognized that the volume of shipments of petroleum is greater than the volume of shipments of any other liquid commodity, it is pointed out that there are numerous other liquid commodities transported in tank cars. Forty-four are enumerated in an exhibit. Some of the tank cars used for the transportation of these commodities are of very special construction. *Albree v. B. & M. R. R.*, 22 I. C. C., 303. The same car can not be used for different liquid products without thorough cleaning, and as a consequence each car must be practically confined to the use of one commodity. While the shipper of a single commodity can familiarize himself and his employees with the risks peculiar to the handling of that particular commodity, the carrier would be under the necessity of acquainting its employees with all the possible difficulties and dangers of all liquid commodities transported. Even the tank cars now devoted to the petroleum trade must be divided into classes and their use restricted to the refined, light lubricating, and heavy lubricating classes. The demand for tank cars amounts in substance to a demand not only for the vehicle but also for the package, and relieves the shippers of the expense of packing which they may properly be called on to bear.

Finally, attention is called to the fact that the Pennsylvania Railroad owns more tank cars than are owned by all the other carriers operating east of the Mississippi. Defendant states that if the other

railroads would furnish cars in the same proportion the supply would be sufficient to meet all requirements, but that complainants' demand would practically require the Pennsylvania Railroad to furnish equipment available for use by all the railroads in this territory.

While it must be recognized that for the shipment of some of the products which now move to a certain extent in tank cars it would not be reasonable to require carriers to furnish tank cars, we do not believe this to be the case in the movement of the products of petroleum. In many industries a few tank cars will suffice to move the products of the industry. In other cases the tank cars must be prepared for shipment in a manner which is peculiarly within the technical knowledge of the men connected with that industry, or the handling of the commodity is a dangerous operation which can be safely performed only by men engaged in its production. In the latter case a shipper's request for cars peculiarly suited for the transportation of his products would not be a reasonable one, and in such cases carriers should publish rates for the transportation of the privately owned tank car filled with these products and not, as in the case of oil, for the transportation of the product in tank cars. The railroad would not then hold itself out to transport the commodity in any other way than in tank cars offered by the shipper, and no obligation would rest upon it to furnish these cars. In such cases the shipper should receive no rental for the use of the car.

The record does not show such technical knowledge to be needed in the shipment of petroleum products in tank cars as to render unreasonable complainants' request to furnish cars. The fact that the defendant has for more than 20 years past been furnishing tank cars for the shipment of oil bears witness to the contrary. We see no particular hardship to defendant arising out of the necessity of allowing its equipment to move beyond its lines. Further, the necessity of defendant's purchasing a large number of additional tank cars does not follow from our holding in the present case. The requirement of the act is that defendant provide and furnish, not necessarily buy, a reasonably adequate supply of cars, and the 13,000 and more tank cars owned by independent car lines are available to defendant as well as to shippers. Defendant's brief contains the suggestion that perhaps the solution will be to have private companies furnish cars of special types. That is a solution of which the carriers can avail themselves if they so desire. Moreover, all cars used by carriers, whether they be owned by the carriers themselves or leased from private car lines or from shippers, must be distributed without discrimination. Hereafter the cars leased carriers by shippers or private car lines will be regarded as cars controlled by the carriers, which must be distributed without discrimination just as in the case of cars

owned by the carriers. This includes all cars secured from shippers for the use of which carriers pay compensation. Carriers should lease cars only upon such terms as permit them to meet their obligation to furnish cars without discrimination. Under this ruling cars of complainants and of all other refiners upon defendant's line offered it for use at a compensation will become available to defendant for distribution among all shippers who may apply for them. At the same time, defendant will be under no obligation to accept for use any privately owned cars unless it chooses to do so. *Atchison Ry. Co. v. U. S., supra.*

The responsibility to the shipper of furnishing a proper supply of cars rests upon the road upon which the shipper is located and the traffic originates. *Campbell's Creek Coal Co. v. A. A. R. R. Co.*, 33 I. C. C., 558, 562; *Coal Rates on the Stony Fork Branch*, 26 I. C. C., 168, 174. The originating line as between it and its connections does not necessarily rest under the burden of supplying all the cars which may be required for transportation over through routes and under joint rates, but in the case of through routes composed of two or more carriers the obligation to furnish cars for transportation over such through routes is joint upon the carriers therein. *Huerfano Coal Co. v. C. & S. E. R. R. Co.*, 28 I. C. C., 502, 506; *Lumber Rates through Ohio River Crossings*, 29 I. C. C., 38, 39; *Pittsburgh & S. W. Coal Co. v. W. P. T. Ry. Co.*, 31 I. C. C., 660, 663.

One of the tests which may be relied upon in determining the reasonableness of a shipper's request for cars is to be found in the volume of his shipments in the past, due allowance being made for the growth of his business. Complainants have not only shown that the volume of their past shipments is such as to justify the demands for equipment which they have made but also have introduced evidence tending to show that in the future the volume of their business will be as great as in the past. Defendant will be required, upon reasonable request and reasonable notice, to furnish tank cars in sufficient number to move complainants' normal production. Defendant can not be required to furnish all the cars which may be demanded by complainants under extraordinary conditions arising from exceptional causes, which could not reasonably have been anticipated and which make it physically impossible to furnish all the cars desired.

An appropriate order will be entered.

CLARK, *Commissioner*, dissenting:

I am unable to agree with the conclusions reached by the majority. I do not think that the enactment of the provision of section 1 of the act, "and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon

reasonable request therefor," enlarged the obligations or duties laid upon the carriers in this respect by the common law. It seems to me to have been the incorporation in the act of a declaration of the common-law duty of the carriers as a foundation for the exercise of the powers conferred upon the Commission by the act. The terms "railroad" and "transportation" are defined in section 1 in terms which are and were intended to be inclusive of all of the carrier's transportation facilities that are subject to regulation under the act. Section 15 enumerates various powers that are conferred upon the Commission, and provides that that enumeration shall not exclude any power which the Commission would otherwise have under the provisions of the act. Section 20 specifies certain liabilities which shall rest upon the carrier in the event of loss of or damage to property received by it for transportation, and provides that nothing in the section shall deprive the holder of the carrier's receipt or bill of lading of any remedy or right of action which he has under existing law. There is no language in section 1 which indicates a legislative intent to expand the common-law duty of carriers to furnish facilities for transportation.

The majority report in the instant case reasserts the possession by the Commission of powers that were asserted in the majority report in *Vulcan Coal & Mining Co. v. I. C. R. R. Co.*, 33 I. C. C., 52. If the act confers upon the Commission power to order a carrier to enlarge its complement of cars and to award damages against it if it fails to comply with such order, it seems logically and necessarily to follow that the Commission has the same power to order enlargement of terminal facilities, increase in the number of locomotives, and extension of tracks or branches. In fact, no facility of transportation is exempt. I think that this power is vested in the courts and not in the Commission. For the reasons that were more fully stated in the dissent in the *Vulcan Coal & Mining Co. case, supra*, I am not able to accept the views of the majority on this point.

There can be no question of the right and power of the Commission to so regulate the use of the facilities possessed by the carrier that there shall be no unjust discrimination. Plainly the shipper should not be required to deal with any other than the carrier in contracting for and receiving transportation, and such was plainly the intent of the Congress when all of the facilities were made subject to the act, regardless of ownership thereof. I, of course, agree that the carrier may provide facilities by purchase, lease, or rental, and that by whatever means they are acquired by the carrier the shipper has a right to demand the use thereof and service therefrom without unjust discrimination against or undue preference in favor of any.

COMMISSIONER CLEMENTS requests me to say that he concurs in this dissent.

HARLAN, *Commissioner*, also dissenting:

I concur in the general thought underlying the dissenting report herein of my brother CLARK, namely, that the language in the act upon which the majority report is largely based is simply declaratory of the general duty of carriers at common law to furnish such cars and other facilities as are reasonably necessary to enable them to fulfill their public obligations, but does not impose upon this Commission any such administrative duty or any such jurisdiction and power as are asserted in the majority report and in the order accompanying it.

84 I. C. C.

No. 5484.
ENNS MILLING COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY ET AL.

FOURTH SECTION APPLICATION No. 1667.

Submitted July 28, 1913. Decided April 30, 1915.

1. In view of the action taken by the carriers since the hearing in withdrawing the lower rates from Hutchinson and McPherson, Kans., the fourth section application is denied.
2. Defendants' rates for the transportation of flour, bran, and shorts from Inman, Kans., to various destinations in southwestern Missouri found unreasonable and reasonable rates prescribed for the future. Reparation awarded.

M. E. Casto for complainant.

W. T. Hughes and *F. J. Shubert* for the Chicago, Rock Island & Pacific Railway Company.

F. H. Wood and *F. C. Dumbeck* for the St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Inman is a local point on the line of the Chicago, Rock Island & Pacific Railway Company in the state of Kansas, and is intermediate to Hutchinson on the west and McPherson on the east, from which points it is distant 16 and 11½ miles, respectively. Both Hutchinson and McPherson are junctions of the Chicago, Rock Island & Pacific and the Missouri Pacific. Medora, Kans., a junction of the Chicago, Rock Island & Pacific and St. Louis & San Francisco, is intermediate to Hutchinson on the west and Inman on the east, from which points it is distant 10 and 6 miles, respectively. Aurora, Carthage, Granby, Joplin, Lamar, Liberal, Minden, Oronogo, Springfield, Webb City, Harrisonville, Leeds, and Rich Hill are points in southwestern Missouri that may be reached from Hutchinson and McPherson direct over the line of the Missouri Pacific. With the exception of Harrisonville, Leeds, and Rich Hill, they also may be reached from Hutchinson, McPherson, and Inman over the line of the Rock Island through Medora, Kans., and thence southeast over the line of the Frisco. Harrisonville, Leeds, and Rich Hill may be reached over

the line of the Rock Island through Kansas City, Mo., and thence south over the line of the Frisco.

It is thus made clear that traffic transported by the defendant carriers from Hutchinson may pass through Inman in the eastward movement via Kansas City, as also may traffic from McPherson in the westward movement via Medora. This observation leads to immediate consideration of the fourth section question.

The Missouri Pacific for a number of years has charged for its single-line haul from both Hutchinson and McPherson to the points named in southwestern Missouri rates of 13 cents and 12½ cents on flour and 11½ and 10½ cents on bran, respectively. From August 24, 1905, to March 24, 1914, the Rock Island and Frisco applied this same basis via Medora and Kansas City from Hutchinson and McPherson; and until July 18, 1910, also applied these same rates from Inman under an unqualified intermediate clause in the governing tariff. The intermediate clause was altered July 18, 1910, in a way that made it applicable only from points not specifically named in the tariff that were situated between and *next adjacent* to two points named in the tariff. Hutchinson and McPherson were both named in the tariff, but Inman was not; neither was it *next adjacent* to either Hutchinson or McPherson, the first station west being Medora and the first station east being Groveland. The result of this change was to withdraw the joint rates then applicable from Inman and leave in force from that point only the higher combination of intermediate rates through Medora and Kansas City, which are as follows, viz:

To—	Via—	Flour.	Bran and shorts
Harrisonville.....	Kansas City.....	\$0. 20	\$0. 17½
Leeds.....	do.....	. 17½	. 15½
Rich Hill.....	do.....	. 20	. 18
All other destinations.....	Medora.....	. 17	. 15

It will be observed that the intermediate application was withdrawn between the date the fourth section amendment was passed, June 18, 1910, and its effective date, August 18, 1910. Fourth Section Application No. 1667 was filed December 16, 1910, and the intermediate clause of the tariff in its altered form was entirely eliminated March 25, 1911, but this did not affect the situation as it then stood. On March 24, 1914, after the record in this case had been closed, the defendant carriers withdrew the lower joint rates from both Hutchinson and McPherson, and inasmuch as the fourth section violation was thus removed an order will be entered denying the application for relief therefrom.

There still remains for consideration the allegation of the complainant, a corporation engaged in the milling business at Inman, that the combination rates left in force from that point to the stated destinations in southwestern Missouri are unreasonable and unduly discriminatory.

The general rate structure in force from Kansas grain fields and milling points to markets in southwestern Missouri has, according to tariffs on file with this Commission, been maintained without substantial change for at least 10 years, not only by the defendant carriers, but by the Missouri Pacific and Santa Fe upon an alternative basis, and it is controlled by the rates in force from Kansas grain fields to Kansas City, Mo. This structure is known to carriers and shippers as the "higher Kansas City rate basis," and in effect means that the rates from Kansas grain fields to points in southwestern Missouri will be determined by the rates applicable to Kansas City either from the Kansas grain fields or the southwestern Missouri destinations, whichever rates are higher. Representative rates under this structure are shown in the following table, viz:

Carrier.	Rates.		Approximate distances.	
	Flour.	Bran and shorts.	Maximum.	Minimum.
			<i>Miles.</i>	<i>Miles.</i>
C., R. I. & P.....	\$0. 14½	\$0. 12½	476	408
Do.....	. 13	. 11½	312	202
St. L. & S. F.....	. 13	. 11½	400	330
Do.....	. 12½	. 10½	330	231
Missouri Pacific.....	. 13	. 11½	310	268
Do.....	. 13½	. 12	361	301

Over the line of the Atchison, Topeka & Santa Fe approximately the same general scale of rates for the distances named are in force. An exception to this application is that the Kansas-Missouri mileage scale will apply when lower, but as this latter scale seldom becomes operative over distances more than 200 miles it does not affect the issues in this case.

The average distances from Hutchinson, Inman, and McPherson over the lines of the defendant carriers to the points of destination named in the complaint are, via Medora, 263, 261, and 272 miles, respectively, and via Kansas City, 271, 250, and 245 miles, respectively; while the average distance from Hutchinson and McPherson over the direct line of the Missouri Pacific is 270 miles. For these average distances the rates applicable under the "higher Kansas City rate basis" would not be more than 13 cents on flour and 11½ cents on bran.

In defense of the higher scale maintained from Inman it was urged by the defendant carriers that the Commission in the case of *Southwestern Missouri Millers' Club v. M., K. & T. Ry. Co.*, 22 I. C. C., 422, and other cited cases, had fixed reasonable rates for the transportation of grain and grain products over certain distances and that the scale applied from Inman was substantially in accord with the rates so fixed. But it was not shown that the level of rates prescribed by order of the Commission in the cited cases had been established from other milling points in Kansas to the destinations named in the complaint. From these other milling points, many of which are more distant than and competitive with Inman, we find that the "higher Kansas City rate basis" prevails, and we are of the opinion that this same basis should apply from Inman unless justification is found in the further defense that higher rates may be maintained because of the more expensive two-line service furnished by the defendant carriers.

In this connection it is of some importance to observe that the "higher Kansas City rate basis" applies from points on many lateral branches of the different carriers, and such service over single lines is not much different from a two-line service.

We are of the opinion that the present difference between the combination rates now in force from Inman and the rates prevailing under the "higher Kansas City rate basis" from more distant and competing milling points is too great. This difference should not, we think, exceed $1\frac{1}{2}$ cents per 100 pounds, and we therefore find that reasonable rates not to exceed $14\frac{1}{2}$ cents on flour and 13 cents on bran and shorts should be established from Inman, Kans., to the points of destination named in the complaint. To properly observe the fourth section provisions the rates so established must not be exceeded from intermediate points.

Coming now to the question of damages: The complainant testified that prior to the increase in rates from Inman it had established a profitable business at the destinations named in the complaint; that in order to hold this trade it was required to make all sales subsequent to March 25, 1911, at a delivered price, calculated upon basis of the lower rates previously in force; that the arrangement was to allow the consignees credit on the invoices for freight charges based on the lower rates, and upon surrender of the paid freight bills to reimburse them for the difference between the credit thus allowed and the charges actually paid upon basis of the higher rates.

There were offered in evidence 46 paid freight bills covering as many shipments made between May 23, 1911, and September 27, 1912, and it was stated that other shipments had been made, the freight bills for which were not then available.

The amount of damages claimed is the alleged loss to the complainant through reimbursing the consignees for the difference between the charges actually paid on traffic transported subsequent to March 25, 1911, at the higher rate and the credit allowed on invoices upon basis of the lower rates previously in force. The record is not clear as to what rates were charged on traffic that may have been transported between July 18, 1910, and March 25, 1911. The complaint was filed January 27, 1913, and includes only traffic transported subsequent to March 25, 1911.

We are of the opinion and find that the complainant is entitled to reparation to the extent of the difference between the freight charges paid and the rates herein found to be reasonable, with interest, on all shipments transported within the statutory period, which runs from January 27, 1911. This reparation, however, can not be granted on the present record. Complainant should prepare a statement showing the date of each shipment, point of destination, route of movement, car number, weight, the amount of freight charges paid by it, and the amount of reparation claimed on the basis herein indicated. This statement, together with the freight bills, should be submitted to the defendants for audit, and when agreed to by all parties it should be forwarded to the Commission, when the matter will be taken up with a view to the issuance of an award of reparation. To this end the receipted freight bills now contained in the record will be returned to the complainant.

Orders will be entered in accordance with the conclusions herein reached.

34 I. C. C.

No. 5626.
GRAND RAPIDS PLASTER COMPANY
v.
**LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY ET AL.**

Submitted October 21, 1913. Decided May 24, 1915.

1. Present carload rates and minimum carload weights on plaster and other gypsum products from Grand Rapids, Mich., to points in northern Illinois and southern Wisconsin are unjustly discriminatory as compared with rates and minimum weights on those commodities which the same carriers contemporaneously maintain or join in maintaining from Fort Dodge, Iowa, to such points. Defendants required to remove the discrimination.
2. There is no discrimination against Grand Rapids and in favor of Fort Dodge in the practices of these defendants in making deliveries of plaster and other gypsum products from both points to team and industrial tracks in the Chicago switching district.

E. L. Ewing for complainant.

D. P. Connell for Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; Chicago, Indianapolis & Southern Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

F. S. Hollands for Chicago Great Western Railroad Company.

James H. Campbell for Grand Rapids & Indiana Railway Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Pittsburgh, Fort Wayne & Chicago Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

Charles McPherson for Pere Marquette Railroad Company and its receivers.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The Grand Rapids Plaster Company, complainant herein, is a Michigan corporation engaged in mining and quarrying gypsum rock and manufacturing products thereof at Grand Rapids, Mich. It here claims the right to lay down plaster and other gypsum products in northern Illinois and southern Wisconsin on a parity with competing shippers operating at Fort Dodge, Iowa, and prays that an order issue commanding the defendant carriers to cease and desist from violations of sections 1, 2, and 3 of the act, which, complainant asserts, now handicap it in that market.

As defined by complainant upon hearing, northern Illinois comprises the entire northern half of that state, and southern Wisconsin com-

prises the portion of that state south of an east and west line passing through Sheboygan.

Complainant avers that the consuming points in northern Illinois and southern Wisconsin are on an average 100 miles nearer to Grand Rapids than to Fort Dodge, and that the transportation of plaster in carloads from both points of origin to this common market is, otherwise, under substantially similar circumstances and conditions; that Grand Rapids pays higher rates to these consuming points than does Fort Dodge; that the latter has the benefit of an alternative and lower carload minimum weight not accorded to Grand Rapids; and that the rate from Grand Rapids to Chicago, formerly 7.5 cents, and now 7.9 cents, does not apply to as many delivery tracks in the Chicago switching district as does the rate of 8 cents per 100 pounds from Fort Dodge to Chicago, with the result that additional switching charges accrue on some Grand Rapids shipments sufficient to overcome the seeming advantage in rate.

The charge that section 1 is violated is really a charge of comparative unreasonableness in the rates from Grand Rapids. The defendant carriers, some 36 in number, include all reaching Grand Rapids and all reaching Fort Dodge with their own rails, and, with their connecting carriers, maintain through routes and joint rates from Grand Rapids to the common market in question. These joint rates are usually less than the combination of the intermediates.

The answers of the carriers are general denials, with the averment in some instances that the issues here were decided by the Commission in *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co.*, 17 I. C. C., 30.

Up to and including the year 1906 Michigan led the states in the production of gypsum rock and gypsum products. Since then the Michigan production has remained practically stationary, and is now exceeded by that of New York and of Iowa. The increase in Iowa from 1906 to 1911 was, roughly, 25 per cent; in New York, 65 per cent. In the country at large the consumption of gypsum products has increased in 10 years from 100,000 tons to 1,000,000 tons per annum. Complainant attributes Michigan's relative lack of increase to restriction of the markets available for the Grand Rapids product, largely because of the rates from Fort Dodge to northern Illinois and southern Wisconsin.

Grand Rapids is the only producer of gypsum products within 300 miles of that market, the greatest consumer of such products within 300 miles of Grand Rapids. Complainant urges that this region is its natural and should be its principal market.

The following is a table of rates, distances, and minimum weights submitted by complainant and brought up to date by check against the tariffs on file with this Commission:

Rates on plaster, carloads, in cents per 100 pounds.

Beloit, Wis.....	202	12.5	12.9	40,000	205	10.0	30,000
Janesville, Wis.....	191	12.5	12.9	40,000	201	10.0	30,000
La Crosse, Wis.....	218	15.5	15.9	40,000	225	10.0	30,000
Madison, Wis.....	202	15.52	15.92	40,000	257	10.0	30,000
Milwaukee, Wis.....	120	7.5	7.9	40,000	205	12.5	30,000
Monroe, Wis.....	225	15.52	15.92	40,000	205	8.0	30,000
Racine, Wis.....	143	9.0	9.5	40,000	205	10.0	30,000
Sheboygan, Wis.....	173	7.5	7.9	40,000	205	12.5	30,000
Watertown, Wis.....	195	12.5	12.9	40,000	205	11.25	30,000
Waukesha, Wis.....	140	9.0	9.5	40,000	205	15.0	30,000
Aurora, Ill.....	214	8.5	9.5	40,000	228	15.0	30,000
Bloomington, Ill.....	209	9.5	10.0	40,000	257	12.5	30,000
Chicago, Ill.....	177	7.5	7.9	40,000	205	8.0	30,000
De Kalb, Ill.....	225	9.5	10.0	40,000	205	10.0	30,000
Dixon, Ill.....	275	10.5	11.0	40,000	205	8.0	30,000
Elgin, Ill.....	214	9.5	9.5	40,000	205	10.0	30,000
Freeport, Ill.....	287	10.5	11.0	40,000	205	8.0	30,000
Fulton, Ill.....	275	12.5	13.1	40,000	205	10.0	30,000
Galesburg, Ill.....	212	12.5	13.1	40,000	205	8.0	30,000
Galesburg, Ill.....	225	11.5	12.1	40,000	205	15.0	30,000
Kankakee, Ill.....	200	7.5	7.9	40,000	205	10.0	30,000
La Salle, Ill.....	253	9.5	10.0	40,000	205	12.5	30,000
Mendota, Ill.....	225	9.5	10.0	40,000	205	8.0	30,000
Moline, Ill.....	215	12.5	13.1	40,000	205	10.0	30,000
Ottawa, Ill.....	225	9.5	10.0	40,000	205	8.0	30,000
Peoria, Ill.....	208	9.5	10.0	40,000	205	10.0	30,000
Quincy, Ill.....	439	11.5	12.1	40,000	205	12.5	30,000
Rockford, Ill.....	220	9.5	12.1	40,000	205	10.0	30,000
Rock Island, Ill.....	215	12.5	12.1	40,000	205	8.0	30,000
Savanna, Ill.....	274	12.5	12.1	40,000	205	9.2	30,000
Streator, Ill.....	267	9.5	10.0	40,000	205	8.0	30,000
					205	12.5	30,000

¹ Minimum, 40,000 pounds east; 30,000 pounds west of junction point.

² Minimum, 40,000 pounds east; 24,000 pounds west of junction point.

³ Effective June 15, 1915, rate from Grand Rapids to Rockford will be 9.5 cents.

Rates on gypsum products from Grand Rapids to destinations in central freight association territory are usually made 83½ per cent of the sixth-class rates. This adjustment was approved by this Commission in the *Acme case*, *supra*, and operates with relative justice as between various points of production in central freight association territory. But complainant insists that application of this percentage adjustment greatly restricts the territory within which Grand Rapids can sell in competition with Fort Dodge, because rates from the latter point are not similarly based. The movement

from Fort Dodge to points in northern Illinois and southern Wisconsin is entirely within western classification territory, and the rates are upon the basis of class C of that classification.

Shipments from Grand Rapids to destinations in northern Illinois and southern Wisconsin are usually transported by central freight association lines to Chicago junctions, or ports on the western shore of Lake Michigan, and beyond by defendant carriers operating in western classification territory. Two of the latter are the Illinois Central Railroad Company and the Chicago Great Western Railroad Company, the only lines entering Chicago from the west that also reach Fort Dodge with their own rails. Another defendant, the Minneapolis & St. Louis Railroad Company, connects with its own rails Fort Dodge and Peoria, Ill. Still another, the Fort Dodge, Des Moines & Southern Railroad Company, connects Fort Dodge and Des Moines, Iowa.

The rate, recently advanced, of 7½ cents from Grand Rapids to Chicago, minimum carload weight 40,000 pounds, was established January 1, 1901. The rate of 8 cents from Fort Dodge to Chicago, minimum carload weight 60,000 pounds, was made by the Illinois Central Railroad Company and by the Chicago Great Western Railroad Company in September, 1901. Substantially 99 per cent of the business from Fort Dodge to Chicago moves on this rate.

After the establishment of the rate of 8 cents from Fort Dodge to Chicago by the direct local lines, competing carriers named the same rate over the through routes formed by their connecting lines. Thereafter, presumably in obedience to the long-and-short-haul rule of the fourth section, the rate of 8 cents was applied intermediately by the two direct lines, and the competing lines met this application. The result of all this has been to accord the rate of 8 cents from Fort Dodge to a great many points in northern Illinois and southern Wisconsin.

Ordinarily the joint rates on plaster from Grand Rapids to this competitive territory are on a basis from 1 to 1½ cents per 100 pounds higher than they would be if made on the regular basis governing in central freight association territory. This, the carriers say, is because the lines west of Chicago apply certain rules of the Illinois freight committee peculiar to their territory in building these joint rates from Grand Rapids. The eastern lines assert that any reductions to these particular destinations would necessarily force a reduction to all points in central freight association territory, but we are not convinced of this.

It is clear that these adjustments as between Grand Rapids and Fort Dodge to this particular territory are primarily due to different principles of rate making.

The following comparison of ton-mile revenues earned on rates shown in the table set forth above illustrates some of the signal inequalities in the present adjustment:

Rates on plaster, carloads, per 100 pounds.

To—	From Grand Rapids.			From Fort Dodge.		
	Rate.	Dis- tance.	Earnings per ton-mile.	Rate (30,000 pounds mini- mum).	Dis- tance.	Earnings per ton-mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Janesville, Wis.....	12.9	191	13.5	10.0	301	6.6
Madison, Wis.....	16.23	202	16.1	10.0	287	7.0
Monroe, Wis.....	16.23	225	14.4	10.0	286	7.0
Racine, Wis.....	9.5	143	13.2	12.5	365	6.8
Watertown, Wis.....	12.9	165	15.6	15.0	323	9.8
Fulton, Ill.....	13.1	278	9.4	10.0	252	7.9
Galesburg, Ill.....	12.1	335	7.2	10.0	288	6.9
Moline, Ill.....	13.1	316	8.8	9.2	248	7.4
Ottawa, Ill.....	10.0	238	8.4	10.0	362	5.7
Rockford, Ill.....	13.1	220	11.9	10.0	289	6.9

In instances where Fort Dodge enjoys a lower rate on a higher minimum this inequality is even more marked. This table shows clearly that to the vicinity of Milwaukee and to the west and southwest of Chicago the Fort Dodge producer ships on more favorable rates than does his Grand Rapids competitor.

In *Elk Cement & Lime Co. v. B. & O. R. R. Co.*, 22 I. C. C., 84, the Commission said, page 88:

It is a rule too well settled to need discussion that as distance increases the rate per ton per mile decreases, and merely because a greater distance point has a lower rate per ton per mile than a shorter distance point discrimination does not necessarily result. It is equally well settled, however, that rates must not only be reasonable in and of themselves, but they must also be relatively reasonable. The duty imposed by law is to give equal treatment to all shippers, and this includes the right to reach competitive markets on relatively equal terms. Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like, but they may not in any manner whatsoever unduly prefer one set of shippers entitled to equal treatment over another or one locality over another.

The circumstances and conditions governing transportation from both points do not warrant rates on plaster and other gypsum products from Grand Rapids that are relatively higher than those contemporaneously maintained on the same articles from Fort Dodge to destinations in northern Illinois and southern Wisconsin, as that territory is defined in this report.

The defendants say that the Fort Dodge lines must make a 30,000-pound minimum on shipments to competitive points west and southwest, and that it would be impossible for those lines to maintain a different minimum basis into this particular territory. The record shows clearly that in the smaller communities many purchasers prefer

to buy gypsum products in lots of not more than 30,000 pounds. It has happened, though infrequently, that complainant has been compelled to pay on the minimum of 40,000 pounds in order to make a sale of 30,000 pounds. The maintenance of higher minimum weights for carloads from Grand Rapids than from Fort Dodge to this territory is an unjust discrimination against Grand Rapids. The carriers should readjust their rates to remove this objection.

There remains the charge of failure to apply the Grand Rapids-Chicago rate to all points in the Chicago switching district. Elsmere, Ill., on the Chicago, Milwaukee & St. Paul Railway, is specifically mentioned as a point to which the Grand Rapids shipper, in order to effect team-track delivery, must pay a switching charge over and above the Grand Rapids-Chicago rate.

There are team tracks on all lines entering Chicago to which switching charges are collected on traffic reaching Chicago via other lines. Whatever disadvantage Grand Rapids suffers in making deliveries on Chicago team tracks of western lines is apparently offset by what Fort Dodge suffers in making deliveries on Chicago team tracks of eastern lines. There are no industrial tracks or sidings in the Chicago switching district which can not be reached from Grand Rapids on the regular Chicago rate. Defendant Lake Shore & Michigan Southern Railway Company in the first six months of 1913 made 280 carload deliveries of Grand Rapids gypsum products in Chicago. On 265 of these cars, 4 delivered at Elsmere, this carrier absorbed switching charges of connecting lines to an average amount of \$6.32 per car. Only 15 cars were delivered on team tracks of the Lake Shore & Michigan Southern Railway Company. The present record does not convince the Commission that Grand Rapids suffers any unjust discrimination in making deliveries in the Chicago switching district in competition with Fort Dodge.

The present adjustment of rates as between Grand Rapids and Fort Dodge to northern Illinois and southern Wisconsin bristles with inequalities. Some of these have been pointed out above. A thorough check of the rates on plaster and other gypsum products from Grand Rapids and Fort Dodge to points in this consuming territory should be made with a view to eliminating the discrimination.

The carriers will be expected to readjust these objectionable rates within 60 days from the service hereof. If this is not done, the matter may be brought to our attention for appropriate action. No order will be entered pending such readjustment.

No. 6677.
BOARD OF TRADE OF KANSAS CITY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-
PANY ET AL.

FOURTH SECTION APPLICATIONS Nos. 2045, 3786, 4151,
4218, 4219, 4220, AND 4326.

Submitted January 4, 1915. Decided May 25, 1915.

1. Joint class rates on coarse grain in carloads which exceeded the aggregate of intermediate commodity rates contemporaneously in effect found to have been unreasonable and unlawful.
2. The Commission is confined in the making of awards of reparation to the injury or damage sustained by those who are the real and substantial parties at interest. Reparation denied.
3. Applications for relief for violations of the fourth section, which have since been cured, are denied, and the waiver of the collection of certain undercharges authorized.

H. G. Wilson, J. E. Johnson, and R. D. Sangster for complainant.
J. N. Davis and J. G. Love for Chicago, Milwaukee & St. Paul
Railway Company.

W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway
Company.

A. F. Cleveland and C. C. Wright for Chicago & North Western
Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway
Company.

H. G. Herbel and F. B. Clark for Missouri Pacific Railway
Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

It is alleged here that the joint class rates, in effect when the complaint was filed, on coarse grains moving in carloads from points in the state of Iowa to Kansas City, in the state of Missouri, were unreasonable, unduly prejudicial, and discriminatory; and the complaint prays for an order requiring the defendants to establish reasonable rates for the future. Reparation is also demanded on ship-

ments that moved over the defendant lines to the destination in question during the fall of 1913 and the spring of 1914, the movement during that period having been abnormally large because of a crop failure in the territory west of Kansas City.

On many of the shipments as to which reparation is demanded class rates were collected, while on others the lower aggregate of the intermediate rates was assessed. This irregularity was due to the fact that prior to the period mentioned the movement of coarse grains into Kansas City from Iowa points had been very limited, and the existence of effective joint class rates was overlooked by the defendants until after numerous shipments had been made. As soon as this condition in their tariffs was disclosed the defendants made demand for the undercharges on the various shipments upon which the lower aggregate of the intermediate commodity rates had been collected.

The joint class rates have since been canceled, leaving in effect the intermediate commodity rates; and the complaint asks, among other things, for relief from the payment of the undercharges on the ground that the class rates were unreasonable in so far as they exceeded the aggregate of the intermediate rates. The complaint alleges no violation of section 4 of the act; nevertheless we may take judicial notice of the fact, shown upon our records, that applications for relief from that provision of the law have been filed by certain of the defendants, although they were not set for hearing with this complaint, while other defendants have not applied for such relief.

With respect to the class rates collected on this traffic between the points in question by those carriers defendant by which no applications for relief under the fourth section have been filed it necessarily follows that, being in excess of the aggregate of the intermediate commodity rates, the joint class rates were unlawful. With respect to the joint class rates of the other defendant carriers we must reach the same conclusion upon the record before us, notwithstanding the fact that those carriers had protected themselves in the use of such rates by fourth section applications. For, those rates being under attack in this proceeding because they were in excess of the intermediate rates, the burden of showing their reasonableness was upon those defendants. The record, however, contains no justification of them and, as heretofore stated, they were afterwards canceled. Under these circumstances we find and conclude upon the record that they were unreasonable, and the waiver of the collection of such rates will be authorized in the cases where undercharges are now outstanding. The order to be entered herein will so provide; and as the violations of the fourth section just mentioned have been cured, the order will also provide for the denial of the fourth section applications that have been filed. The only question remaining for consideration

therefore is whether there is a basis of record for an award of reparation upon the shipments moving during the period heretofore mentioned and upon which the higher class rates were assessed and collected.

The complaint was filed by the Board of Trade of Kansas City, a voluntary association of merchants engaged in business in one way or another at that point, and the shipments just mentioned were consigned to grain merchants who are members of the association. But the actual shippers of the grain from the various points of origin are not members, nor does the association claim definite authority in any way to represent them. The grain was shipped on commission, and, having been sold, the freight charges actually collected were included in the settlements made with the original shippers. It appears therefore that neither the complainant nor its members have been damaged in any way by reason of the rates actually assessed on this grain. The petition itself does not show that it was filed in behalf of the actual shippers, nor do we find that the actual shippers are named as parties to the record or that they are before us in any way. But one witness testified in support of the complaint. He pointed out that a grain dealer, handling grain on commission, is simply an agent of the shipper; that he receives the grain, has it inspected and weighed, and then sells it and remits the proceeds less his commission and other charges. He looks after all these details in the interest of the actual shipper. The witness stated that he understood it to be usual with others, as it was customary with his own house, to make claim against the carriers for any overcharge that may be discovered, and that he had correspondence from many of the actual shippers of the grain involved in this proceeding requesting them "to handle the claims for them"; that this is something of a general usage in the grain trade; and that if reparation is awarded on the carload shipments upon which the through class rates were exacted, the amount would be remitted to the actual shippers.

There is no reason to doubt the good faith of these representations or that this is the underlying purpose of the proceeding. Moreover, the various shipments involved in the proceeding are described of record with respect to the point of origin, date of movement, car number, and carload weight. In some instances the freight receipts have been filed, and in one or two cases the consignor is named on the record. The only witness who testified in support of the complaint also indicated that he could furnish the names of the consignor of each of the shipments. Nevertheless the complaint was not filed either by the consignors or in their behalf, or by anyone shown by the record to have been damaged by the higher rates here condemned

as unreasonable. Referring to associations of shippers like the complainant here, it is said in *Baer Brothers Mercantile Co. v. D. & R. G. R. R. Co.*, 233 U. S., 479, 487:

On the application of such bodies, old rates might be declared unjust and new rates established, but, of course, no reparation would be given, for the reason that such complainants were not shippers and, therefore, not entitled to an award of pecuniary damages.

The interest in this proceeding of the actual shippers of the grain is indicated only by the testimony of the single witness who appeared for the complainant. His statement, as heretofore explained, was that any award made by the Commission would be paid over to the actual shippers. Under the law and our practice and rulings this is not a sufficient basis for an award of reparation to persons who are not before us as parties to the record. The complaint must therefore be dismissed, and the order to be entered will so provide.

84 L. Q. Q.

No. 6616.

**APPLICATION OF THE ERIE RAILROAD COMPANY,
UNDER THE PROVISIONS OF SECTION 5 OF THE ACT
TO REGULATE COMMERCE AS AMENDED BY THE
PANAMA CANAL ACT, SEEKING AUTHORITY FOR THE
CONTINUANCE OF ITS INTEREST IN AND OPERATION
OF THE LAKE KEUKA NAVIGATION COMPANY.**

Submitted August 1, 1914. Decided May 29, 1915.

Upon application of the Erie Railroad Company under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, for authority to continue its interest in and operation of the Lake Keuka Navigation Company; *Held*, That said petitioner does not compete for traffic with the said Lake Keuka Navigation Company within the meaning of the act.

W. A. Taylor and M. B. Pierce for Erie Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This report involves only so much of the Erie Railroad Company's application, filed under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, as relates to its interest in and operation of the Lake Keuka Navigation Company, hereinafter referred to as the navigation company.

The Erie Railroad Company operates as owner and lessee a line of railroad extending from Jersey City, N. J., through the states of New Jersey, New York, Pennsylvania, and Ohio to Marion, Ohio. It owns the capital stock of the Erie Land & Improvement Company, which company in turn owns the capital stock of the Southern Tier Development Company, which company in turn owns the capital stock of the Lake Keuka Navigation Company.

The Lake Keuka Navigation Company owns and operates four boats serving the ports located on Lake Keuka, in the state of New York, which connect at Hammondsport with the Bath & Hammondsport Railroad, a subsidiary of the petitioner herein, and at Penn Yan with the northern central division of the Pennsylvania Railroad and with the New York Central Railroad.

It appears that the navigation company furnishes the only means of transportation for the people living in the territory served. The

approximate distance between the main ports served by the navigation company's boats, namely, Hammondsport and Penn Yan, is 22 miles. From Keuka college to Penn Yan, a distance of about 8 miles, a trolley line is operated.

The territory around Lake Keuka is a grape-producing region, some 18,000 acres of land being in cultivation as vineyards. The chief traffic moving from the territory is grapes and wine, while inbound, the traffic consists mostly of vineyard supplies.

It does not appear that the rails of the petitioner, or any of its subsidiaries, serve the ports located on Lake Keuka in common with its said boats, nor does the petitioner join in through rates with other carriers reaching said ports.

From a consideration of all the conditions and circumstances here presented, the Commission is of opinion and finds that the petitioner does not compete for traffic with the boats which it owns and operates on Lake Keuka, N. Y., within the meaning of the act, and that the existing service is not in violation of section 5 of the act to regulate commerce, as amended by the Panama Canal act.

84 L. Q. Q.

No. 6941.
T. W. SHANDS ET AL.
v.
SEABOARD AIR LINE RAILWAY ET AL.

Submitted January 23, 1915. Decided May 25, 1915.

A state statute provided that carriers should reimburse shippers for expense incurred in staking flat cars for loading with lumber. Refusal of carriers to comply with this statute in connection with shipments of lumber moving in coastwise and foreign trade found not to have been unjustly discriminatory or unlawful. Complaint dismissed.

W. J. Lafferty and M. B. Jennings for complainants.

R. Walton Moore and C. J. Rixey, jr., for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are partnerships engaged in the manufacture of lumber, timber, etc., with sawmills at Meredith, Fla., on the Seaboard Air Line Railway, and Walling Spur, Fla., on the Atlantic Coast Line Railroad. The complaint, filed on complainants' behalf by the Southern Traffic Bureau, May 20, 1914, alleges that defendants' refusal to pay complainants \$1.50 per car for equipping flat cars loaded with lumber with stakes, stanchions, etc., is discriminatory and unduly prejudicial. Reparation is asked on 92 carloads of lumber shipped from Meredith to Jacksonville and Fernandina, Fla., between May 30, 1912, and September 12, 1912, and on 88 carloads from Walling Spur to Jacksonville between January 28, 1913, and November 25, 1913. Provision for the allowance demanded for the future also is asked.

A Florida statute enacted in 1903 required common carriers doing an intrastate business to equip all flat cars belonging to them and furnished for the transportation of lumber or timber with all suitable and sufficient stanchions, supports, etc., to keep the cargo firmly in place, or to pay to shippers furnishing such stanchions, supports, etc., \$1.50 per car as compensation. The shipments involved moved over defendants' lines wholly intrastate, but concededly and demonstrably were intended for continuous shipment in coastwise and foreign trade. Until the decision of the Supreme Court in *T. & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111, defendants considered the Florida statute of 1903 applicable to shipments of the

kind involved, but following that decision properly refused to do so any longer. Defendants' failure to provide similar allowances for interstate shipments is supported by *National Wholesale Lumber Dealers' Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 154, where we said, at pages 160 and 162:

Staking the load is in reality a part of the operation of loading, and in the case of lumber it appears that, as a practical matter at least, one side of the car must be staked before the load can be placed. * * * The lumber business has been conducted for many years with reference to the custom of loading and staking carload shipments by shippers and is now firmly established on that basis.

In *S. W. Missouri Millers Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 245, where the reciprocal obligations of carriers and shippers were further discussed, we added, at page 251, that—

Generally, when it is necessary to secure upon the car freight which the shipper loads, it is the duty of the shipper to provide the necessary material and do the work.

Nothing appears to warrant a departure from these decisions.

Complainants admit that no competition exists between local shipments of lumber to the ports involved and shipments for export; also, that no disadvantage or prejudice was suffered in favor of other ports in Florida. Where the allowances prescribed by law for local shipments are paid, lower charges result on local than on export shipments, but mere differences in charges do not establish unjust discrimination.

Upon all of the facts disclosed we find that defendants' refusal to pay the allowances demanded and to provide for such allowances for interstate or foreign shipments was neither unjustly discriminatory nor otherwise unlawful.

An order dismissing the complaint will be entered.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 546.
RATES ON LOGS FROM STUTTGART AND OTHER POINTS
IN ARKANSAS TO MEMPHIS, TENN.

Submitted February 1, 1915. Decided May 25, 1915.

Proposed cancellation of rates on logs in carloads from Stuttgart, Ark., and other points in the same vicinity to Memphis, Tenn., not found to be justified.

G. E. Schnitzer for respondent.

J. H. Townshend for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The tariff provision under suspension in this proceeding, filed to take effect November 27, 1914, and proposing to cancel a specific commodity rate to Memphis, Tenn., on logs in carloads from all points on the branch of the Chicago, Rock Island & Pacific Railway extending from Mesa, Ark., approximately 20 miles, to Stuttgart, Ark., upon appropriate protest, is suspended until September 27, 1915.

Respondent's reasons for the proposed cancellation are that no logs have moved, or can move, from these points, except perhaps occasionally; that the present rate was published inadvertently; and that the rate might be used in comparisons to respondent's detriment. Protestants were unable to testify concerning the traffic, and their protest was due evidently to their general opposition to all increases of this kind rather than to any injury likely to result from this particular increase. It was shown, however, that there are tracts of timber which, by the construction of spur tracks, may possibly find an outlet over the branch involved.

Specific rates on logs from Arkansas points to Memphis are carried in respondent's present tariff. Rates are named from numerous points on respondent's main line from Little Rock to Memphis and on several other branches besides the Stuttgart branch. The carload rate on logs from about 20 stations between Hart and Palestine, Ark., is 4½ cents per 100 pounds; the rate from all points between Hazen and Lonoke, Ark., 6 cents. Lonoke, the most westerly point, is 111 miles from Memphis. Hazen is a few miles west of Mesa, and the branch line from Mesa to Stuttgart is nearly perpendicular to the line through Hazen and Lonoke. Stuttgart is 109 miles from Memphis, and the rate from points on the Stuttgart branch is 6 cents, the

same as from points between Hazen and Lonoke. The rate proposed to be canceled therefore accords with the other rates carried by respondent.

The cancellation proposed would render applicable a rate of 11 cents per 100 pounds, which is the rate applicable to carload shipments of lumber. No evidence was adduced to prove this rate reasonable for shipments of logs. Since logs move from points in the same vicinity at rates ranging from 4½ cents to 6 cents, a rate of 11 cents from the points involved presumably would be discriminatory even for a single carload shipment of logs. The present rates from points in the same vicinity also vitiate respondent's contention that the rates in issue may be used detrimentally to respondents in rate comparisons.

Upon all of the facts disclosed we find that the cancellation proposed is not justified, and an order will be entered accordingly.

84 I. C. C.

No. 6614.

APPLICATION OF THE CHICAGO & ERIE RAILROAD COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS OWNERSHIP AND OPERATION OF CERTAIN WATER EQUIPMENT ON THE CHICAGO RIVER.

No. 7010.

APPLICATION OF ERIE RAILROAD COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, CONCERNING ITS OWNERSHIP AND OPERATION OF CERTAIN WATER EQUIPMENT ON THE CHICAGO RIVER.

Submitted August 1, 1914. Decided May 29, 1915.

Upon applications of the Chicago & Erie Railroad Company and the Erie Railroad Company, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, to continue their interest in and operation of certain tugboats, barges, and other equipment used on the Chicago River; *Held*:

1. That the ownership by the Erie Railroad Company of the capital stock of the Chicago & Erie Railroad Company is such as to render it a proper and necessary applicant under the act with respect to its interest in certain water equipment directly owned by its subsidiary.
2. That the fact that the petitioners are parties to through all-rail route arrangements between the points served by the water equipment here involved makes it possible for the petitioners to compete for traffic with such water equipment within the meaning of the act.
3. That the service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration. The tariffs of rates applicable via this water route must be filed in accordance with the provisions of the act to become effective by July 15, 1915.

H. A. Taylor and M. B. Pearce for Erie Railroad Company and Chicago & Erie Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

The Chicago & Erie Railroad Company and the Erie Railroad Company make application herein, under the provisions of section

5 of the act to regulate commerce, as amended by the Panama Canal act, to continue their interest in and operation of certain tugboats, car floats, barges, and other equipment used by them for transferring freight on the Chicago River.

The Erie Railroad Company operates as owner and lessee a line of railroad extending from Jersey City, N. J., through the states of New Jersey, New York, Pennsylvania, and Ohio to Marion, Ohio. This petitioner owns the capital stock of the Chicago & Erie Railroad Company. As hereinafter pointed out, this latter company owns and operates certain water equipment in use on the Chicago River and harbor. The fact that the Erie Railroad Company owns the capital stock of the Chicago & Erie Railroad Company, which latter company is in turn the owner of certain water equipment, makes it a proper and necessary applicant under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act.

The Chicago & Erie Railroad Company owns and operates a line of railroad extending from Marion, Ohio, to the Indiana-Illinois state line near Hammond, Ind., and thence operates over the tracks of the Chicago & Western Indiana Railroad into the city of Chicago, Ill. This petitioner is the owner of and operates two harbor tugboats known as the *Frederick D. Robbins* and the *Alice Stafford*. The latter is not at present in operation. In connection with said tugboats it owns and operates two steel car floats, equipped with double tracks to accommodate eight freight cars, and two covered barges. This equipment is employed by this petitioner to make delivery from its freight terminal at Chicago to industries located on the banks of the Chicago River. These industries, however, are served by tracks of other terminal roads or switching belt-line roads, and in conjunction with such switching roads this petitioner joins in certain switching tariffs on file with the Commission.

It does not appear that the petitioners herein reach with their own rails the industries served by the water equipment herein concerned, but since it appears that these petitioners participate in tariffs publishing switching charges to said industries it is possible for them to compete for traffic with such water equipment within the meaning of the act.

It appears that there are some 500 industries located on the banks of the Chicago River, and that this water service, which has but recently been installed by these petitioners, will furnish a cheap and expedited delivery service to and from said industries and the freight terminals of the petitioners, and that this water service will relieve materially the congestion which oftentimes prevails on the delivering belt-line railroads on which these industries must other-

wise depend. The traffic director of the Chicago Association of Commerce appeared to express this association's interest in the continuance of this service.

From a consideration of all the facts of record the Commission is of opinion and finds that the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither prevent, reduce, nor exclude competition on the route by water here under consideration.

The tariffs publishing the rates, rules, and regulations applicable to the water service herein concerned must be filed in accordance with the provisions of the act to become effective July 15, 1915.

An order will be entered accordingly.

84 I. C. C.

No. 6271.
MONON COAL COMPANY ET AL.
v.
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted May 9, 1914. Decided May 25, 1915.

Rate of 87 cents per ton on coal to Chicago from mines in the Sullivan-Linton group of Indiana found not to be unduly discriminatory as compared with the rate of 77 cents applicable to the same destination from mines in the Brazil-Clinton district of Indiana.

H. E. Bodman and E. S. Cummings for complainants.

Cassoday, Butler, Lamb & Foster and F. H. Harwood for southern Illinois coal operators.

M. F. Gallagher for operators in Brazil-Clinton field.

Frank Crozier and G. W. Reed for Springfield and Third Vein operators.

R. W. Ropiequet for Traffic Bureau Illinois Central Coal Operators Association, St. Louis division; Rutledge & Taylor Coal Company; Nokomis Coal Mining Company; and Fifth and Ninth District Coal Operators Association.

C. B. Cardy, W. W. Collin, jr., R. V. Fletcher, and W. F. Peter for Chicago & Eastern Illinois Railroad Company; Chicago, Indiana & Southern Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Illinois Central Railroad Company; and Chicago, Terre Haute & Southeastern Railway Company.

J. G. Williams for Vandalia Railroad Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

W. J. Freeman for Bicknell operators.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The rate on bituminous coal to Chicago from mines in the so-called Brazil-Clinton group of Indiana is 77 cents per ton; the rate from the Sullivan-Linton field, a few miles to the south, is 87 cents. The petition asks that this differential of 10 cents be abolished and that one reasonable rate be made applicable from both fields. As explained by a witness for complainants, this demand is made on the ground that—

the mining conditions are the same, the seam of the coal is the same, the market is the same, and the area covered by the two fields is smaller than almost any other area where competitive freight rates are recognized in other districts.

The reasonableness of the rate of 87 cents is nowhere questioned. To use the language of counsel—

the sole and only issue in this case is the unjust and undue discrimination in the differential of 10 cents in the rate from the two groups—

and—

the real object of the complaint is to enable complainants to market their coal in the Chicago market, which is their natural market, upon an even basis with their next-door neighbors situated in the 77-cent field.

The nearest mines in the two groups are but 12 miles apart, and it is said that this gap, which is barren of coal, constitutes a natural division between the two districts. The distance from center to center of the two groups is 32 miles. The weighted mileage from the Brazil-Clinton mines over the lines of all the respondents to Chicago is 215.71 miles and from the Sullivan-Linton group 248.05 miles, a difference of 32.34 miles. Whether this difference in distance justifies a freight rate from the more distant group 10 cents per ton higher than is at the same time applied from the nearer group is the issue here before us.

The present adjustment was defended by the carriers on the ground that the service of transportation to Chicago from the two fields is performed under circumstances and conditions that are substantially dissimilar, and detailed testimony as to conditions of operation on the Chicago, Terre Haute & Southeastern and the Chicago & Eastern Illinois was given.

The first-named road, which we shall hereinafter refer to as the Southeastern, extends in a northwesterly direction from the Linton field to Terre Haute and thence northward through the Clinton field to its terminus at Faithorn, near Chicago Heights. It has about 350 miles of main-line track and serves 24 mines in the Linton and 10 mines in the Clinton districts. West Clinton, 123 miles from Faithorn, is the only concentrating point in the Clinton field, and was selected as such because it represents the limits of a practicable operating division. A "turn-around" train starts from West Clinton in the morning, taking empty cars to Latta, 46 miles distant, one of the three concentrating points in the Linton district. At Latta the empty cars are placed on a siding and the engine begins its trip back to West Clinton with loaded cars for Chicago. Because of the grades an engine that can handle 2,200 net tons north of West Clinton can handle only 1,800 net tons between the Linton field and West Clinton. At the latter point the train is broken up, additional cars are added, the cars are switched in station order, and with a different engine and crew the train starts north for Faithorn.

No coal is handled directly through from the Linton field to Chicago because (1) the grades are against a northbound train;

(2) the distance from the Linton field to the Chicago yards is too great to run through with a single train; and (3) the trip could not be made within the lawful limits of the hours of service. A round trip from West Clinton to the northern terminus can be made in the same length of time that two round trips can be made from the same station to the Linton field. The distance from West Clinton to Latta and return is 92 miles, for which the train crews are paid on a basis of 100 miles. The average time required for a car in train movement between West Clinton and Faithorn was 11 hours and 18 minutes and between the Linton field and Faithorn 33 hours and 58 minutes. Cars from the Brazil-Clinton field interchanged at Chicago with the Baltimore & Ohio Chicago Terminal require on the average $9\frac{1}{2}$ days for the round trip from West Clinton, and those interchanged with the Indiana Harbor Belt take $11\frac{1}{2}$ days. Cars from the Linton field take two days longer than those from the Clinton field.

Ninety per cent of the entire tonnage of the Southeastern and 95 per cent of its tonnage over that part of the track extending from the Linton field north to the terminus at Faithorn consists of coal. During the month of October, 1913, there was handled from the Linton district to West Clinton 65,188 tons of coal; of the entire transportation expense \$3,587.02 may be directly allocated to the cost of handling this particular traffic, or 5.5 cents per ton. If to this amount be added approximately 2 cents per ton, due to the additional per diem incurred, as hereinafter explained, there may be directly charged to this coal traffic moving between the lower and upper fields 7.5 cents per ton. The nearest mines on this line in both groups are 30 miles and the most distant mines 56 miles apart. The average distance from the Linton field on the Southeastern is 187.52 miles, and from the Clinton field 144.72 miles, a difference of 42.8 miles; the average weighted mileage from the Linton mines is 209.96 miles and from the Clinton mines 168.49, a difference of 41.47 miles. Taking the average mileage to all deliveries in the Chicago district, the Clinton rate yields 4.6 mills per ton-mile and the Linton rate 4.14 mills; the car-mile earnings from the Linton field are $16\frac{1}{2}$ cents and from the Clinton field 18.4 cents.

The Chicago & Eastern Illinois serves 27 mines in the Brazil-Clinton group and 15 mines in the Sullivan-Linton group. The average distance to Chicago from mines on its rails in the former group is 168.2 miles and from the latter group 204.84, a difference of 36.64 miles. Jackson yard, 162 miles from Chicago, in the northern end of the Brazil-Clinton group and at the southern terminus of the double track of this carrier, is the assembly point for all coal coming from the Brazil-Clinton field. Seifert yard, 192 miles from Chicago, and in about the center of the Sullivan-Linton group, is the assembly

yard for all coal from that group. All coal from both fields for Chicago is assembled at Brewer yard, 126 miles south of Chicago. Two round trips can be made from Brewer to Jackson with the same engine and crew within the 16-hour limit and without the payment of constructive mileage. Halfway between Jackson and Seifert is the city of Terre Haute, at which point considerable delay is experienced in getting trains through the yards. And, while there is no limit to the number of cars that may be handled in a train as far south as Jackson, and the average train is composed of 80 to 85 cars, because of a Terre Haute city ordinance the limit for trains between Seifert and Brewer is 50 cars. The average time consumed by a coal car in the round-trip service between Brewer and Jackson is 2.95 days, and between Brewer and Seifert 5.29 days. The additional 2.34 days required in the service to Seifert, based on the per diem charge of 45 cents, and an average car loading of 40 tons, results in an augmented cost to the carrier of 6.7 cents per ton, due solely to per diem charges or the loss of their earnings on their own equipment.

In the *Illinois Coal cases*, 32 I. C. C., 659, 674, we referred to the fact that the coal-mining interests of that state had enlarged the physical capacity of their mines to a point where it is in excess of the demand, and that the superior quality of the southern Illinois coal had given it an advantage in the consuming markets and disturbed and curtailed the markets for the less satisfactory coals of other fields. Much that was said in that report applies with equal force here. The record shows that about 1900 the No. 6 coal of Sullivan county was the best domestic coal produced in Illinois or in Indiana. In 1902, because of the anthracite strike, large profits were made in this coal, and the following year within a radius of 30 miles 12 mines were opened, "all of which made money until 1906 or 1907." About this time, however, the development began in Franklin county in southern Illinois. The Illinois coal proved to be better for both domestic and steam purposes than the No. 6 and took away from the latter its market in Chicago and the northwest. A little later, with the development of the Knox county mines in the Sullivan-Linton group, with their low cost of production, the No. 6 coal lost its market in the so-called gas belt of Indiana. The result is that while these mines have been extensively developed and have a large capacity, they have at this time no sufficient market. This is the history of the No. 6 coal as it is detailed of record by an operator of 46 years' experience, who from 1901 to 1905 operated in the Sullivan-Linton field and has been interested in the Brazil-Clinton field for the past 24 years. While this testimony is controverted by the complainants, it is not denied that the coals of Williamson and Franklin counties in southern Illinois do compete with the No. 6 coal of the Sullivan-Linton group.

Twenty-five per cent of the stock of the Monon Coal Company is owned by the Monon Railroad, which has also guaranteed the interest on the bonds of the coal company. The mines acquired by this company had already passed through one receivership. The stock of the Consolidated Coal Company, the other complainant, is owned by the Rock Island. The complainants own 15 out of a total of 50 mines in the Sullivan-Linton district, but produce about 40 per cent of all the coal mined in that district. The Consolidated Coal Company at the time of the hearing was operating 6 mines, of which 4 are in the No. 6 seam and 2 in the No. 5 seam. It had been operating 10 mines, but 4 were abandoned, not because they were exhausted but because of inability to work them continuously enough. The policy of that company is apparently to "develop larger mines rather than to operate a great number of smaller mines." The Monon Coal Company had 9 openings, of which 2 were in the No. 4 seam and the remainder in the No. 6 seam; they have recently closed down 2 mines, of which 1 was in the No. 6 seam. At the time of the hearing there were 20 mines in the Sullivan-Linton district operating in this seam and only 1 in the Brazil-Clinton district. The record, we think, shows that to the development of the southern Illinois field may be traced a part at least of the difficulties in which the Sullivan-Linton operators now find themselves. The No. 6 coal, however, is only an incident in the situation. To the opening of new mines in the Brazil-Clinton group, particularly in the No. 4 seam, may be traced directly the cause of the present depression in the lower field. Prior to 1908 or 1909 there was but one mine in the Brazil-Clinton district producing No. 4 coal, at that time regarded as the best coal mined in the state. Being both a domestic and steam coal, it comes in strong competition with the No. 5 coal of Knox county and the No. 6 coal of Sullivan and Greene counties, which are, respectively, steam and domestic coals. In 1906 but 3,870 tons of No. 4 coal were mined in the Brazil-Clinton group; in 1913 the production was 2,647,399 tons. On the other hand, the production of the same coal in the Sullivan-Linton field, which was, in 1906, 2,153,947 tons, was in 1913 but 2,775,512 tons, or an increase of 28.85 per cent. Here is found the real cause of the present complaint. The No. 4 coal is, as we have said, the best coal mined in the state, and, to quote counsel for the complainants—

So long as the Sullivan-Linton district had the advantage in the production of a superior coal in large quantities it was able to overcome to a certain extent its differential in the freight rate. * * * But, on the other hand, Brazil-Clinton now has an equal output and will shortly have a very largely predominating output of No. 4 coal, and the advantage, both in quality and in differential, will be on the other side.

When the output of the northern field was small the volume of trade was sufficient to make an overflow into the lower district; but now "every month sees the overflow lessened and the lack of it becomes more and more serious." That overflow has been taken up by what is referred to of record as "the enormous new modern mines with their great tonnage in the Brazil-Clinton group." The record shows that the acreage in the lower field is well taken up and that capital has lately turned to the northern field. Aside from the investments of the United States Steel Corporation and the Chicago & Eastern Illinois Railroad, \$2,500,000 of private capital has been invested in the Brazil-Clinton field, and some of the operators who at one time had mines in both fields have transferred their operations entirely to the northern field.

The testimony of witnesses for the complainants shows beyond a doubt that the competitive conditions now existing in the Chicago market as between the coal from these two groups is due to the development during the past few years in the Clinton field, and particularly the new mines in the No. 4 seam. The "enormous new modern mines with their great tonnage in the Brazil-Clinton group" are taking away from the mines in the Sullivan-Linton group the market they formerly enjoyed in Chicago. As we have said, one of the complainants has abandoned four of its mines because it prefers to "develop larger mines rather than to operate a great number of smaller mines." Apparently this has not helped the situation, for it was testified—

If we could close half of our mines and attempt to operate the other half it would not improve conditions; they would open another mine in Clinton.

The complainants are located in that portion of the Sullivan-Linton group lying north of the southern line of Sullivan and Greene counties; that part of the group lying south of that line is referred to on the record as the Knox county, or Bicknell, group of mines. There are six mines in this group, all of which are located on the Vandalia Railroad. Prior to a few years ago the rate to Chicago from the mines in Knox county was 7 cents higher than from the mines in the Sullivan-Linton group; the Knox county mines were made a part of the latter group in 1909. The average distance from mines on the Vandalia in the Brazil-Clinton group to Chicago is 229.9 miles, and in the Sullivan-Linton group 283.7 miles; the most remote mine on the Vandalia in the latter group is 299.7 and the nearest mine 277.9 miles. At the time of the hearing three-quarters of the Sullivan-Linton tonnage into the gas belt, 60 per cent of the total tonnage of the group into Indianapolis, and one-third of the tonnage of the group into Chicago came from the Knox county mines, the output of which increased from 320,000 tons in 1906 to 1,665,000 tons in 1913. This

field formerly mined only No. 6 field coal; all but one of those mines have been abandoned, and that is now being operated in a very small way. The other five mines in the group are working the No. 5 seam. Whether these six mines shall be included in the consolidated group is immaterial to the complainants.

During the last few years, due to the overproduction of bituminous coal, certain fields, once prosperous, are now "fighting for their very existence." In the *Illinois Coal cases, supra*, we found that many mines in the Illinois fields were being abandoned; the same is true in Indiana. There is not a sufficient demand for the coal to enable the mines to be worked with regularity; and idle time is not only expensive to the operators, but causes the miners to seek work in other fields. In the last two years the Monon Company has paid out on idle time, eliminating Sundays and holidays, to the men that maintain the mines, approximately \$175,000. Up to 1913 that company was able to run its No. 4 mines steadily, but the production that year in the Brazil-Clinton field brought about a large amount of idle time. The 54 mines in the Sullivan-Linton field worked on an average but 144 days each in 1913. The competitive conditions under which bituminous coal is marketed at the present time are such that the coal is sold on a very narrow margin, and frequently, as is said to be the case here, at an actual loss. The Monon Company has for the past two and one-half years sold its coal at less than the actual cost of bringing it above ground ready for shipment to market, and the Consolidated Coal Company has in the last three years had but \$5,000 left after paying the actual cost of producing the coal and before paying any interest charges, depreciation, etc. When it is understood that a difference in cost of but 1 cent a ton will turn a contract for railroad coal, the competitive conditions may readily be imagined.

Chicago is the most important market for both the Indiana groups here under consideration. Contracts for large quantities of coal may be had in that city, thus reducing the sales cost. The gas belt of Indiana is another important market. While to points in this belt the rate from both groups is the same, very often the complainants are handicapped in this market also because—

There are a number of jobbing houses in Chicago which buy coal on the Chicago basis. In other words, when we sell them coal they do not tell us where the coal is going to be consigned to. That coal has to be bought on the basis of Clinton competition, and when the coal is ordered forward the jobber in Chicago, who has presumably bought the coal for Chicago business, orders it sent to the gas belt because of the differential existing in the Chicago rate. That has occurred a number of times in our case.

To the south and southeast the Indiana mines are hemmed in absolutely at the river by the Kentucky coal fields, and, owing to local mines, there is but a very limited market north of the river; to

the west they meet the competition of the Illinois coals; in the northwest they must compete with the Illinois coals and others moving over the great lakes from the east; on the east and north they meet the competition of the Ohio and other eastern coals.

The record, we think, clearly indicates that the opening of the southern Illinois field, the increased production in the Bicknell group, the development of new mines in the Brazil-Clinton group, and particularly mines in the No. 4 vein, and the general overproduction in bituminous coal throughout the entire eastern territory, have all contributed in some degree to the decline of the Sullivan-Linton field. The differential complained of has been in effect since 1896, when it was reduced from 13 cents. The complainants entered the field with knowledge of the differential, and by their own testimony were able to compete so long as the coal from the more distant group was of a superior quality. Transportation conditions have not changed, but "the mines have been developed," and the operators in the Sullivan-Linton group now find that their markets are being restricted. This same condition exists also in certain coal fields in the state of Illinois, as we found in the *Illinois Coal cases, supra*. In *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596, 603, we said that we have not the power—

to require railroads, in the face of varying trade conditions, to adjust their rate schedules in such manner as to insure to a market the continuance of a trade it has once enjoyed. The requirements of the law are that transportation rates must be reasonable and must not be unjustly discriminatory or give undue preference.

And again in *In re Advances in Rates for the Transportation of Coal*, 22 I. C. C., 604, 625, we said:

It is not the duty of a carrier to place all of its shippers in a position to meet the markets which they may desire to supply. The rate made by a carrier must be just and reasonable for the service which it gives and should have relation to the cost of that service and the character of the commodity transported.

We have said that the reasonableness of the 87-cent rate is not in issue, but that the case is one of alleged discrimination only. This allegation is not sustained of record. The situation in which the operators of the Sullivan-Linton group now find themselves is due not to a rate schedule that is unreasonable or unjustly discriminatory, but largely to a trade condition which has developed in a neighboring field, namely, the opening of new mines in the Brazil-Clinton field, particularly in the No. 4 vein.

The complaint must therefore be dismissed, and it will be so ordered.

34 I. C. C.

No. 6571.

APPLICATION OF THE DULUTH, SOUTH SHORE & ATLANTIC RAILWAY COMPANY, GRAND RAPIDS & INDIANA RAILWAY COMPANY, AND THE MICHIGAN CENTRAL RAILROAD COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH THEIR JOINT OWNERSHIP AND OPERATION OF THE MACKINAC TRANSPORTATION COMPANY.

Submitted June 22, 1914. Decided May 29, 1915.

Upon joint application of the Duluth, South Shore & Atlantic Railway Company, Grand Rapids & Indiana Railway Company, and the Michigan Central Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue their joint interest in and operation of the Mackinac Transportation Company, owning ferryboats plying between St. Ignace, Mich., and Mackinaw City, Mich.; *Held:*

1. That it appears that the petitioners are parties to through all-rail route arrangements between the ports served by their boats by which it is possible for them to compete for traffic with their boats within the meaning of the act.
2. That the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration.

J. H. Campbell for Duluth, South Shore & Atlantic Railway Company; Grand Rapids & Indiana Railway Company; and Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This case concerns the joint application of the Duluth, South Shore & Atlantic Railway Company, Grand Rapids & Indiana Railway Company, and the Michigan Central Railroad Company, under the provisions of section 5 of the act to regulate commerce, as amended by the Panama Canal act, to continue their joint interest in and operation of the Mackinac Transportation Company.

The Mackinac Transportation Company is a corporation organized under the laws of the state of Michigan, with a capital stock of \$65,000, consisting of 650 shares of par value of \$100 each, of which 216½ shares are owned by each of said petitioners. The company has outstanding in the hands of the public an obligation in the form of

mortgage bonds to the extent of \$144,000. The Mackinac Transportation Company owns and operates two car-ferry boats, known as the *Chief Wawatam* and the *Sainte Marie*. The former has a capacity of twenty-two 40-foot freight cars or 12 passenger cars. The latter has a capacity of 15 standard freight cars. These boats operate between Mackinaw City, on the lower peninsula of Michigan, and St. Ignace, on the upper peninsula of Michigan, and convey cars of freight and of passengers across the Straits of Mackinac. These boats operate the year round, making about four trips a day. It appears that they furnish a connecting link between the petitioning railroad systems which enables them to carry on an expedited through transportation service.

The Duluth, South Shore & Atlantic Railway Company operates a line of railroad between Duluth on the west and St. Ignace and Sault Ste. Marie on the east.

The Grand Rapids & Indiana Railway Company operates a line of railroad between Richmond, Ind., on the south and Mackinaw City on the north.

The Michigan Central Railroad Company operates a line of railroad between Buffalo on the east, Toledo on the south, Chicago on the west, and Mackinaw City on the north.

It does not appear that any one of the petitioners herein owns or operates paralleling rails reaching the ports served by their boats, nor does it appear that any one of them is an integral part of a system of railroad owning or operating such paralleling rails. It appears, however, from tariffs on file with this Commission, that each of the petitioners is a party to through all-rail routes via Chicago, by which it is possible for them to compete for traffic with their boats within the meaning of the act. It should be noted, however, that such all-rail routes are very circuitous and that the probability of actual competition is remote.

From a consideration of all the circumstances and conditions, the Commission is of the opinion and finds that the existing service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuance thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration.

The Mackinac Transportation Company will be expected to file any tariffs which are not at present filed with the Commission, according to the provisions of the act, to become effective by August 1, 1915. An order will be entered accordingly.

No. 6337.

COFFEYVILLE MERCANTILE COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted May 19, 1915. Decided May 29, 1915.

Upon reargument; *Held*, That no occasion has been shown for modifying the original report and order.

E. H. Hogueland for complainants.

H. G. Herbel, F. G. Wright, and R. D. Lincoln for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

R. G. Merrick and A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company and Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION ON REARGUMENT.

HALL, *Commissioner*:

This case, reported in 33 I. C. C. at page 122, was reopened upon motion of the defendants and was argued before the Commission.

Complainants are wholesale and jobbing merchants engaged in business at Coffeyville and Independence, Kans. In the original report the Commission found that in the jobbing business they are in competition with merchants at Chanute, Parsons, Pittsburg, and Fort Scott, Kans., and Kansas City, Mo.; that class and certain commodity rates to Coffeyville and Independence from St. Louis, Mo., and other points mentioned in the report are relatively higher than those to the competing points specified; that there is no marked difference in transportation conditions affecting the complaining cities on the one hand and such competing cities on the other; that there is no evidence showing that the rates to such competing cities are too low, and that defendants' rates on classes and certain commodities to Coffeyville and Independence from St. Louis and other points are unreasonable and unjustly discriminatory to the extent that they exceed the present rates to Chanute and Parsons by more than certain prescribed differentials. Reasonable maximum rates were prescribed.

The chief objection urged by defendants to the original report of the Commission is that, as alleged by them, it practically disrupts the rate fabric established in pursuance of the Commission's decision in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673. The position of the carriers was, perhaps, best summarized in the concluding statement made on their behalf at the argument. This is that the car-

riers do not wish to see the *State of Kansas case* reopened or to have their rates again revised downward and further reductions made in their revenue, as they do not believe that they can stand it. Aside from this, it is insisted that the Commission erred in its finding as to the existence of competition.

The defendants would prefer to let the present adjustment of rates remain in effect. If, however, this can not be done, they assert that they should be permitted to increase the rates to Chanute, Parsons, and other points in southeastern Kansas, at the same time making any reductions which would be required by the new basis.

The order of the Commission fixes rates to Coffeyville and Independence only. The record abundantly supports the finding that these cities are in competition with the other designated points in southeastern Kansas. It is unnecessary to consider the question of the effect upon this case of the decision in the *State of Kansas case, supra*. It is of record herein that, in the informal proceedings following the decision in that case fixing rates to six typical points, the Commission expressed the view that rates to Coffeyville should not be specifically fixed upon the general record made therein. In our report in the present case we stated at page 124 that the relationship of rates between Coffeyville and Independence and the other Kansas cities named was not directly involved in the *State of Kansas case*.

Complainants have shown themselves entitled to relief, and such relief should not be denied simply because of the carriers' apprehension regarding the possible consequences. The readjustment tentatively suggested by defendants is manifestly beyond the scope of the present proceeding. The illustrations used to show the possible tendency of our decision herein are interesting, but seem to assume that all rates in this territory will be readjusted upon a differential basis, such differentials, apparently, being computed upon the basis of ton-mile earnings. The reports of the Commission do not warrant the assumption that it has adopted such a theory. In *Union Tanning Co. v. S. Ry. Co.*, 26 I. C. C., 159, 164, it said:

If the Commission should dispose of these rate questions and controversies by resort alone or mainly to comparative distances, ton-mile earnings, and estimated relative earnings, above the estimated so-called "out of pocket" cost to the carrier for each service performed, there could always be found standards for the reduction of every rate to the basis of the lowest, whatever may have compelled or induced its establishment. For the Commission to adopt such a course would inevitably lead to a continuous process of reducing the carriers' revenue, a result which would be detrimental to the public interest as well as unjust to the carriers.

Nothing presented at the argument shows the occasion for any modification of our report and order in this case. The order requiring the establishment of the rates prescribed on or before June 15, 1915, will be left undisturbed.

DANIELS, *Commissioner*, dissenting:

The schedule of rates prescribed in this case is on the whole upon a basis lower than prescribed by the Commission in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673. It is, where comparable, below the scale of state prescribed rates in Missouri. While to some towns the rates reduced in the original report in this case were unjustifiably higher than to other near-by points, and therefore unlawfully discriminatory, there is, to my mind, not sufficient evidence to declare the condemned rates unreasonable *per se*, and for that reason I do not concur in the findings of the majority.

CLEMENTS, *Commissioner*, also dissents.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 513.
RATES TO OR FROM CERTAIN POINTS IN THE CHICAGO
SWITCHING DISTRICT.

Submitted March 13, 1915. Decided, June 7, 1915.

Proposed cancellation of through routes and joint rates in connection with the Chicago Warehouse & Terminal Company and the Merchants Lighterage Company found not to have been justified. Suspended schedules ordered to be canceled.

W. D. McHugh for respondents.

Borders, Walter & Burchmore for Chicago Warehouse & Terminal Company and Chicago Tunnel Company.

Cassoday, Butler, Lamb & Foster, H. C. Barlow, and Walter L. Fisher for Chicago Association of Commerce.

E. G. Loser for Albert Dickinson Company.

L. F. Berry for Reid, Murdoch & Company.

Martin Van Persyn for Sprague, Warner & Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In 1910 the carriers reaching Chicago, Ill., and other carriers located wholly within the so-called Chicago switching district, by the adoption of a joint tariff known as the Lowrey tariff, provided, with some exceptions, for the application of Chicago rates to and from industries, industrial tracks, and other stations located within the Chicago switching district, whether or not such industry, industrial track, or station was located upon or directly connected with the line performing the road haul.

The Merchants Lighterage Company, hereinafter termed the lighterage company, and the Chicago Warehouse & Terminal Company, an Illinois corporation, hereinafter termed the tunnel company, were and are parties to the Lowrey tariff and to arrangements between carriers provided for therein. Shipments to or from the stations of the lighterage company or of the tunnel company move as through shipments, and the lighterage company and the tunnel company receive certain divisions of or allowances from the through rates.

By supplement 10 to Lowrey's tariff I. C. C. No. 22, published to become effective September 1, 1914, the cancellation of Chicago rates to and from the stations of the lighterage company and of the tun-

nal company in connection with the Chicago & North Western Railway Company was proposed. Upon protests of the Illinois Manufacturers Association, the Chicago Association of Commerce, and other shippers and receivers of freight in Chicago, the operation of this schedule was suspended by the Commission until June 30, 1915.

Subsequently, supplement No. 12 to Lowrey's I. C. C. No. 22 was filed, to become effective October 1, 1914, proposing, with certain exceptions hereinafter referred to, to cancel on behalf of other carriers the application of Chicago rates to and from stations of the tunnel company and the lighterage company. This supplement was suspended by the Commission until July 29, 1915.

Certain supplements to individual tariffs of the Chicago, Rock Island & Pacific Railway Company and supplement No. 16 to Lowrey's I. C. C. No. 22, which proposed similar additional cancellations, were also suspended.

If these cancellations are permitted to become effective, the rates to and from stations of the tunnel company and of the lighterage company will, with certain exceptions to be noted later, be increased.

The Lowrey tariffs provide for the application of Chicago rates from and to 2,249 industries named therein, including those served by the tunnel company and the lighterage company, and also from and to some 220 freight depots, within the Chicago switching district.

The Chicago Tunnel Company, an Illinois corporation, acquired, at receiver's sale, the property of the Illinois Tunnel Company, which constructed the tunnels. It owns the tunnels, tracks, equipment, and other property connected therewith, except the terminals and terminal facilities, which are owned by the tunnel company. Under a contract the Chicago Tunnel Company performs the transportation for and in the name of the tunnel company. The tunnel company maintains and operates the terminal facilities at the stations and elevators. The tunnels are underneath the streets of the main wholesale and retail district of the city. They aggregate about 60 miles in length, are 7.5 feet high and 6 feet wide, and contain railroad tracks of a gauge of 2 feet, which are operated by electricity. Access to the tunnels from the surface is afforded by 58 elevators which connect with the stations of the various railroads entering Chicago, 19 elevators connected with commercial houses or industries, and 5 elevators at so-called universal stations. Other elevators used for deliveries of coal to industries and buildings and at a disposal station on the lake front are not involved in this proceeding. The railway equipment consists of 132 electric motors of from 30 to 50 horsepower, 2,402 merchandise cars, 350 excavation cars, 235 coal and ash cars, and 8 miscellaneous cars.

The tunnel company has two classes of freight stations: One, "universal" stations, at which less-than-carload shipments of freight are

received from and delivered to the public generally; the other, "commercial" stations, which are located at industries or commercial houses and are analogous to private sidings.

At freight stations of the trunk lines the tunnel company elevates its loaded cars to the floor level, where they are moved from the elevators onto tracks laid upon the floors of the stations and are unloaded by the employees of the line-haul carriers. Inbound shipments taken from the freight stations of the line-haul carriers by the tunnel company are handled in a similar manner.

Commercial houses and industries served by the tunnel company have expended large sums to provide themselves with connections with its tracks.

The tunnel company receives its compensation out of the through rates, without limitation as to the amount of freight taken from or delivered to the line-haul carriers, if the freight originates or is delivered at its universal stations. On that originating at its commercial stations it receives no division of the through rate or compensation from the line-haul carriers unless certain minimum quantities are delivered to it by one shipper, or by it to one consignee from one of the line-haul carriers, in one day, nor unless the gross revenue accruing to the line-haul carrier and its connections on the required minimum quantity of freight equals or exceeds \$15. The minimum quantities are fixed at 6,000 pounds for the western lines and 10,000 pounds for the eastern lines. In certain specified instances the required minimum inbound may come jointly from two or more line-haul carriers. In instances in which the required minimum weight is not delivered, or in which the gross earnings do not amount to \$15, the shippers and consignees are required to pay the local charges of the tunnel company in addition to the Chicago rates. These additional charges accrue on about 25 per cent of the traffic handled by the tunnel company. The divisions of the rates accruing to the tunnel company are generally the same as its local rates, 4 cents per 100 pounds on shipments to or from industries, or from one railroad connection to another railroad connection, and 6 cents per 100 pounds on shipments to or from its universal stations.

The eastern lines, such as the Erie, the Wabash, the New York Central, and the Pennsylvania, do not propose to withdraw the arrangement for through rates in connection with the tunnel company to or from its universal stations.

During 1914 the tunnel company handled at its universal stations 275,218 tons of merchandise, and the total tonnage in the same year was 609,320 tons. Its universal stations are located in different parts of the city, and each serves as a great convenience to many shippers. Its commercial stations are, of course, located along the lines leading to or through the universal stations. It files tariffs and reports with

this Commission, keeps its accounts in accordance with our prescribed classification, and holds itself subject to all of the requirements of the act. It settles loss and damage claims and is a member of the Freight Claim Agents' Association. It has long been recognized by connecting railroads, the shipping and receiving public, and the Commission, as a common carrier, respondents propose to maintain relations with it as such as to a part of its service, and it is not now contended that it lacks in any of the attributes of a common carrier subject to the act.

The stocks and bonds of the Chicago Warehouse & Terminal Company and of the Chicago Tunnel Company are owned by a holding company, the Chicago Utilities Company, a Maine corporation. The owners of its securities and shares are not shippers or receivers of freight in Chicago. The franchise granted by the city of Chicago for the operation of these tunnels extends to 1929, and the city receives 5 per cent of the gross receipts from transportation of freight for the first 10 years of the franchise, 8 per cent for the next 10 years, and 12 per cent for the remainder of the period.

For many years various rail carriers reaching Chicago have applied Chicago rates to shipments from and to industries served by the lighterage company.

The lighterage company is an Illinois corporation, organized for the purpose of conducting transportation on the Chicago River and connecting waterways. It began service in 1903 with one small boat, and through rates in connection with the Chicago & Alton Railroad only. It now maintains universal stations, at which freight is received and delivered for all who desire to use them, and it also serves certain industries at docks or landings not used by other industries or shippers. It owns and operates two boats, specially constructed for this service, which cost, respectively, \$25,000 and \$40,000. It issues bills of lading, assortments shipments for delivery to the different line-haul carriers, conveys them to the rail terminals, and trucks them into the cars. Inbound shipments are taken from the cars by employees of the lighterage company and are delivered at the landings of the industrial stations and to teams or in the warehouses at the universal stations. The shipments move on through bills of lading from points of origin to destinations. The lighterage company handles both carload and less-than-carload shipments. If it receives on one day from one consignor for one or more railroads, or from a carrier in one day for one consignee, a minimum of 10,000 pounds, the Chicago rates apply and it receives its divisions thereof. These minimum requirements, however, do not apply to shipments from and to the universal stations. The lighterage company does not interchange freight with any eastern carriers other than the Wabash and the Erie, for the reason that they are the only

ones which have stations on the river, and interchange by switching service through intermediate lines would be too expensive.

In general the lighterage company's divisions of through rates are 8 cents per 100 pounds on carload and 5 cents per 100 pounds on less-than-carload shipments. When, however, the carload rate to or from Chicago is 4 cents per 100 pounds or less the lighterage company receives no division; when the rate to or from Chicago is more than 4 cents and less than 7 cents per 100 pounds the lighterage company receives as a division the difference between 4 cents per 100 pounds and the rate. On the less-than-carload shipments its division is 50 per cent of the rate, with a maximum of 5 cents per 100 pounds. The lighterage company does not share with the rail carriers in moving traffic entirely within the Chicago switching district.

The eastern carriers do not propose to cancel the joint rates with the lighterage company on shipments to and from its universal stations. Counsel for respondents stated on the argument that it was probably wrong to withdraw the carload rates in connection with the lighterage company.

The lighterage company files tariffs and reports with this Commission and keeps its accounts in accordance with our regulations. It has long been recognized as a common carrier, and it is not here contended that it is not, in fact, a common carrier subject to the act. The status under the act of a carrier by railroad is not determined by the length or the width of its railroad.

During the year 1914 the lighterage company handled 134,482 tons of freight, of which 53,634 tons moved in carloads. Firms or industries whose officers and employees own stock of the lighterage company shipped during 1914 about 7.5 per cent of their tonnage via its line. About one-third of the tonnage handled by it is shipped or received by such firms. Some of them use its services to a very limited extent. The largest shipper via its line has no officer or employee who is financially interested in the lighterage company.

Originally Hibbard, Spencer, Bartlett & Company, a wholesale hardware firm of Chicago, owned the stock of the lighterage company. In 1911, under a reorganization, the stock was distributed and is now largely held by officers or employees of large commercial firms or corporations. No profit has accrued or now accrues to any of the owners of the stock of the lighterage company as a result of its operations, and it is stated on the record that if the ownership of this stock by those who are employed by firms or houses that ship and receive freight via the lighterage company is deemed to be in any way objectionable, arrangements will be at once made to transfer that ownership to other hands. There is no suggestion in the record that the lighterage company receives unduly large divisions

of rates, or that any shipper or consignee of freight receives any undue preference through its service or operation.

Neither the tunnel company nor the lighterage company has paid dividends on its outstanding stock. Neither of them has had gross earnings sufficient to pay operating expenses and fixed charges.

The city of Chicago has an area of approximately 30 miles in length and 8 miles in width. It is served by 31 railroads, owned by 24 separate corporations. There are 81 freight stations in the city where freight is received by various carriers for noncompetitive points. There is no universal station for the receipt and delivery of freight north of the Chicago River except those maintained by the tunnel company and the lighterage company.

In general, Chicago rates apply on shipments to and from all points within the Chicago switching district, and various universal stations for the receipt and delivery of less-than-carload freight are maintained by railroads reaching or lying within the Chicago switching district, to or from which Chicago rates are applied, the carriers compensating each other for the necessary switching service. We see no substantial difference between the services performed by the tunnel and lighterage companies and those performed by the line-haul carriers for each other or those performed for the line-haul carriers by the several belt-line or industrial railroads within the switching district. Chicago rates from eastern trunk line and New England territories apply through Chicago as far north as Manitowoc, Wis., 162 miles from Chicago. The eastern carriers deliver such shipments to the western lines directly or via the various belt lines through and around Chicago. Chicago rates apply via Chicago eastbound from Milwaukee, Wis., 85 miles distant from Chicago, to eastern trunk line and New England territories, and the traffic is handled in substantially the same way as is that westbound. Chicago rates apply from Milwaukee to points as far west as Denver, Colo., and via the lines of some carriers apply through Chicago. No good reason appears for placing the industries and shippers who are served by and dependent upon the tunnel and lighterage companies at a disadvantage as compared with other shippers and consignees in the Chicago district, which, by cooperative action of the carriers and for commercial, industrial, and competitive reasons has become, and been maintained as, a common rate district or community.

The justification for cancellation of through rates with the tunnel and lighterage companies consists mainly in the declaration that the line-haul carriers are within their rights in taking such action because the service rendered by the tunnel and lighterage companies is a service beyond the rails of the line-haul carriers, for which they have a legal right to insist upon an additional charge. They show the amounts paid to the tunnel and lighterage companies out of the through rates,

but they fail to present any evidence to show that the increased charges to those who use or are dependent upon the tunnel or lighterage company will be reasonable, and practically ignore the question of unjust discrimination against shippers and consignees which would thereby be created. If the line-haul carriers join with each other and with various industrial or short-line railroads and belt-line railroads in applying Chicago rates to and from industries within the Chicago switching district, we fail to see how unjust discrimination could be avoided if they refused to accord the same rates and services to industries within the district that are served by the tunnel and lighterage companies. There is no proposal to cancel the application of Chicago rates to and from points on the railroads mentioned within the Chicago switching district, excepting those involved in Investigation and Suspension Docket No. 414, *Cancellation of Rates in Connection with the Small Lines in Official Classification Territory*, now before the Commission. This record does not disclose whether or not the establishment of proposed charges for trap-car service, involved in the proceeding just cited, would remove the discrimination against shippers and consignees who use the tunnel and lighterage companies' services, as compared with other shippers and consignees in the Chicago district; but it certainly would not remove the discrimination against the tunnel and lighterage companies as common carriers which we think would result from permitting the cancellation of through routes and rates with those companies to become effective.

Some respondents maintain arrangements for the handling of less-than-carload shipments between industries on their lines and line-haul carriers that do not reach those industries, under which the line-haul carriers absorb the charges of the originating or delivering road. It is not proposed to withdraw these arrangements or the tariffs governing them, either in this proceeding or in the trap-car investigation. Chicago rates apply on less-than-carload shipments to and from Joliet, Ill., and none of the carriers reaching that point proposes to impose any charge in addition to the Chicago rates, nor do the Michigan Central Railroad and the Elgin, Joliet & Eastern Railway propose to establish a charge at Joliet for trap-car service.

It appears that the average charges for switching services in the Chicago switching district which are absorbed by line-haul carriers amount to \$12.75 per car. The average carload loading of less-than-carload shipments is about 15,000 pounds. On such carloads the tunnel company's division or earnings would be from \$6 to \$9 per car, and the lighterage company's maximum earning \$7.50 per car. On less-than-carload shipments to or from universal station No. 7 of the Chicago, Burlington & Quincy Railroad absorptions cost the Baltimore & Ohio Railroad, as the line-haul carrier, 11.64 cents, the New

York Central 11.44 cents, and the Pittsburgh, Fort Wayne & Chicago 10.19 cents per 100 pounds.

Respondents cite *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 L. C. C., 93, as sustaining the position which they have assumed in the instant case. The conditions existing at St. Louis and considered in the case cited are so different from those in Chicago now considered as to render that case inapposite.

As stated, no evidence is offered tending to justify the proposed increased rates or charges which would result to industries served by the tunnel and lighterage companies. Respondents rely upon the right which they assert to conclude arrangements for joint rates with a terminal line involving service rendered beyond the rails of the line-haul carriers, provided no unjust discrimination results therefrom. We find, however, that the cancellations of such rates here involved would result in unjust discrimination against the tunnel company, the lighterage company, and shippers and consignees located on their lines. The situation in Chicago is such that no single carrier can adequately serve the public with its own rails. It must enter into arrangements with other carriers which are in essence extensions of its rails. Transportation activities in and rates to and from Chicago are subject to conditions of intense competition. All this has led to the establishment and long maintenance of arrangements between the trunk lines themselves and with numerous terminal and belt lines within the Chicago district, which, as has been seen, have long included the tunnel and lighterage companies. No sufficient justification has been shown for singling them out from among the other terminal carriers or agencies in the Chicago switching district for withdrawal of the common or uniform application of the Chicago rates.

The minority report suggests that the Commission fails in the performance of its duty if it does not take "the steps necessary" to assist those carriers that wish to discontinue the performance of what are termed "free services," and to prevent other carriers from offering or performing services which they deem to be in their interest, which they are willing to perform and which they have a right to perform if they practice no unjust discrimination in connection therewith.

The powers possessed by the Commission are limited by the terms and spirit of the act by which those powers are conferred or delegated. The policy of Congress has been and is to encourage competition between carriers. The Commission has no power to prescribe a minimum charge for any service or the maximum service that shall be performed for any charge. It may not take "the steps necessary" to prevent a carrier from maintaining a rate lower than

the Commission would prescribe or from performing for a given rate more service than it would require. Whatever opinion may be entertained as to what the powers of the Commission ought to be, the law as it is must control. The law has been clearly laid down in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S., 42; *United States v. B. & O. Southwestern Ry.*, 226 U. S., 14; *United States v. B. & O. R. R. Co.*, 225 U. S., 306; 231 U. S., 274; and the *Tap Line cases*, 234 U. S., 1; and it is our duty to loyally accept and follow the principles so established.

For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a "free service." The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.

From all the facts appearing in a voluminous record, in which protestants have gone exhaustively into details which it has not seemed necessary to here mention, we are of opinion and find that respondents have failed to justify the proposed cancellations.

Our order will require that the schedules under suspension be canceled, and that the existing arrangements with the tunnel company and the lighterage company be continued.

HARLAN, Commissioner, dissenting:

The tunnel dealt with in the majority report lies at a substantial depth under the streets of the city of Chicago. It was built primarily for the operation of a public telephone system, and in 1913 there were about 25,000 tunnel telephones in actual use. They were operated at a monthly loss that was made good by the tunnel company to the operating telephone company, not by virtue of any agreement between them, but under what was termed "current account" and "advances." The charter of the tunnel company stated its object to be to furnish, transmit, convey, and deliver sounds, signals, and intelligence, packages, mail matter, and general merchandise, power, heat, and light, by steam, water, air, electricity, or otherwise.

The tunnel is only 7½ feet high and 6 feet wide. Its tracks are only 2 feet wide, and are operated by electricity. They reach several of the trunk line freight stations in the city of Chicago. There the small tunnel cars are lifted and lowered to and from the station level by means of an elevator. They are moved as pushcarts from the elevator to tracks on the station floor, where the cars are loaded or unloaded by railway employees. There can be no inter-

change of equipment, of course, by the tunnel company with the railroads. Nevertheless the tunnel line, under the report of the majority, is entitled to have through routes and joint rates with the trunk lines to and from all its stations, both public and private. Transportation in interstate commerce is thus extended from all points in the country to the very basements of the private commercial establishments located along the tunnel.

The time is not available to enable me to go into further details respecting the tunnel and lighterage services that are the subject matter of the majority report. It will suffice to say that, so far as their services at the so-called "commercial" or private stations are concerned, they seem to me to differ only in form, but not in real substance and character, from the service performed for themselves by numberless shippers in Chicago with carts and drays. The tunnel service is closely analogous to the service of pneumatic tubes operated at some points for the local transmission of packages between commercial establishments and railroad stations. The tunnel is undoubtedly a useful facility and its use should be encouraged. One of its advantages is that it tends to relieve the street congestion in Chicago. What it offers to do for the shipper, however, is a shipper's service and not a railway service. It does not differ, in any particular having legal significance, from the service performed by transfer and teaming companies in all the large cities. The latter, by horse and wagon or in motor trucks, haul the freight of shippers to and from the railroad stations. The tunnel and the lighterage companies make store-door deliveries in a different way, but the facilities they offer to shippers, when rightly considered, are a mere substitute for the drays and wagons. This was the view not long ago of those in control of the operations of the tunnel, and it was only comparatively recently that a different claim was made in behalf of the tunnel company. The records of this Commission show that within a very few years the tunnel company did not make annual reports to us and did not comply with other requirements of the act, and that when the attention of those then in control of it was directed to this fact by our examiners it developed that they had not theretofore thought the tunnel company to be subject to the act, "having considered their operations as more of the nature of drayage." It is nevertheless now defined in the majority report as a common carrier and possibly it may be so regarded in many particulars. That, however, does not alter the real character of the service it is performing in handling less-than-car-load traffic between the public freight stations of the trunk lines and the private stations or store doors of shippers. This is universally agreed to be a shipper's service. And it can be nothing but a shipper's service, when clearly considered, even when done by a common-

carrier tunnel company; and when such a service is performed without charge in addition to the transportation rate for the line haul it is necessarily a free service.

So far as less-than-carload traffic is concerned, and such traffic only is handled by the tunnel company, the shippers of this country, as a general rule, bear the burden of getting it to and from the freight stations of the railroads. The trunk lines, however, several years ago undertook to take this burden from shippers in Chicago, along the line of the tunnel and the route of the lighterage company, and to assume it themselves. In the tariffs now under suspension they have attempted to withdraw this free service and to put the burden back upon these shippers, where it properly belongs and where, until a few years ago, it rested. But the majority have intervened and by their report and order now fasten the burden upon the trunk lines for the full period provided by the statute. As I read the report this course has been required of the trunk lines because of certain provisions in the so-called Lowrey tariff, special mention being made of the free trap-car service therein authorized. The withdrawal of through routes and rates to the so-called "commercial" or private stations on the tunnel line will, of course, increase the charges of shippers who now enjoy a store-door service without additional charge, and the majority report finds that the trunk lines have not justified these increased charges. But the conclusions of the report seem to be rested more largely upon the discrimination which it finds will follow if the carriers are permitted to withdraw the free tunnel service while the free trap-car service offered under the Lowrey tariff remains available to shippers. The fact that the service, either by trap car, tunnel, or lighter, to or from a private station or store door of a shipper is unduly preferential and unlawful when performed without charge, so long as thousands of shippers paying the same rate must perform the store-door service for themselves with horse and cart and at their own expense, apparently has had no consideration.

The free trap-car service which the carriers are endeavoring under other tariffs to withdraw is involved in another proceeding in which those tariffs are under suspension. But having here sanctioned and required the continuance of the free tunnel service partly because of the free trap-car service, we may later be compelled, under the reasoning of the majority report, to sanction and require the continuance of the free trap-car service partly because of the free tunnel service. These vastly important questions are thus pursued around a circle, and by dealing with them piecemeal, as in the majority report, and without relation to the broad general principles involved, we make any constructive consideration of them impossible.

Although, as stated, the tunnel service affects only less-than-carload traffic, the same questions in relation to carload traffic are involved in other proceedings pending before us wherein the trunk lines seek to put back upon the shippers the cost of a service which the shippers should properly bear.

It is true, as indicated in the majority report, that not all the eastern trunk lines have proposed charges for the trap-car service; so that, while some railroad officials are attempting to rid themselves of the cost of performing services that shippers ought to perform for themselves or pay the trunk lines for performing, other officials, in a strenuous effort to secure traffic, continue to shrink the line-haul rates to the extent of the cost of such special services. The free tunnel service and the free trap-car service illustrate, however, what it is now time for this Commission to take notice of, namely, that rebates to shippers may be effected in the form of free services, even though authorized by published tariffs, quite as successfully as through the secret payment to them of money or in the failure of the carrier to collect the full published rate on their traffic. As a rule it is the larger shipper who is able to find a way to enjoy these special favors at the hands of the carriers. To have a large traffic is, of course, his good fortune, and his lawful opportunity arising out of his large business ought not to be curtailed in any way. The advantage of a store-door service by trap car or tunnel for his less-than-carload shipments is, however, in itself sufficiently great when either service is available to him at a reasonable charge in addition to the rate. But when this additional service is performed for him by the trunk lines without additional charge it is a free service and, justly considered, is nothing but a rebate in service, even though authorized by a published tariff. The efforts of the carriers by the tariffs under suspension to impose a charge for these services are altogether commendable. Not only should the shipper who enjoys a special service at the hands of a carrier pay for it, but one of the primary duties of this Commission should be to see that he does pay for it. In no other way may the burdens of transportation be fairly and justly distributed among those who use the facilities of a common carrier. It is highly to be regretted, therefore, that any finding or order by this Commission should now be interposed to prevent carriers from enforcing that salutary principle.

The cases cited by the majority in support of the findings of their report do not bear upon the problem before us here. The ruling in *United States v. Balt. & Ohio R. R. Co.*, 231 U. S., 274, for example, rests wholly upon an express finding that the Jay Street terminal, the place of business of Arbuckle Brothers, is open to public use and is used by shippers in general as a public freight station of the defendant carriers. That terminal is therefore analogous to the few

"universal" stations along the tunnel. But the majority report here not only permits but requires the trunk lines to continue to perform a free store-door service at the so-called "commercial" or private stations of particular shippers along the tunnel. These stations are not open to public use. The trap-car operations involve the same private service at private stations of particular shippers. The service is furnished without any charge in addition to the rates paid by the great majority of shippers for a public service at the public stations of the carriers. When each of these two classes of shippers pays the same rate it is manifest that the latter are contributing revenues to the carriers that are used, at least in part, to sustain the private service enjoyed by the former.

The case of *Chicago & Alton R. R. Co. v. Kirby*, 225 U. S., 155, 165, is of much more direct application than those cited in the majority report. Speaking of a special service of advantage to a particular shipper the court there indicated its illegality when not available to all shippers in the same situation and intimated that a higher rate should be exacted for it. The shippers and receivers of less-than-carload traffic in Chicago are all in like circumstance, whether their places of business are located on the river, or along the tunnel, or on industrial sidings, or where they must use a horse and cart. All alike are under the necessity of having their less-than-carload traffic handled to and from their store doors. As we have said, thousands of such shippers at Chicago use the horse and cart and by this means perform the service for themselves and at their own cost. But the less-than-carload shipper with "commercial" or private stations along the tunnel or the river, and those who are in a position to use trap cars, under the majority report are relieved of all cost for their store-door service, and the burden is put upon the carriers.

It should now be apparent to us all that there can be no real regulation of interstate transportation without an affirmative course of action on the part of the Commission itself in dealing with such matters. If we refrain from condemning, and if we refrain from upholding the carriers' efforts to get rid of one free service because we find in existence another free service, without taking the steps necessary to strike both down as unlawful, the efforts of some railway officials to conform their practices, in spirit and in letter, to the requirements of the law will continue to be hampered by other officials who want the traffic and are willing to make the concessions necessary to obtain it. By constantly extending these free services to particular shippers in large communities their cost becomes so great that relief is finally sought through an increase in the line-haul rates, which all shippers must pay, as was pointed out in the recent

Five Per Cent case, 31 I. C. C., 351, where, in reference to the trend of transportation expenses, we said (*id.*, 379) that a substantial part of the increases had "been due to the increase in the special services performed for shippers at terminals and elsewhere without the imposition of any charge or for an inadequate charge."

It has been said that 65 or 70 per cent of the traffic of the country is handled on industrial sidings. The percentage may be even greater. There is reason, however, for thinking that the shippers who have the good fortune to be able to use such facilities are greatly exceeded in number by the shippers who must haul their traffic by horse and wagon to and from the freight stations of carriers. This involves a substantial expense, which the class of shippers using industrial sidings are partly relieved of by the carriers. This disadvantage to the smaller shipper is important in itself, and it is still more aggravated when the free service is further extended through trap-car and tunnel deliveries and in similar ways. The social and economic effect upon the smaller communities of the growing cost to the carriers in operating their terminals at large industrial centers is also a matter that can not be dismissed without comment. There are a number of small communities in the Chicago group that take the Chicago rate on their inbound and outbound traffic, and by paying the Chicago rate they necessarily contribute to some extent to the expense of operating the great terminals of that community. When those expenses are increased in the form of special services beyond the terminals for the special convenience of particular shippers the disadvantage of the smaller outlying communities is likewise increased.

In the view I take of this case it presents a question of great public importance having two phases; one, the economic principle that our transportation costs should be placed where they properly belong, and the other, a question of law, the right of a carrier performing a special service to make a charge for it. This right I regard as also a duty and the failure to perform it a violation of the act. And therefore in enforcing the integrity of the act it is the plain duty of this Commission affirmatively to see to it that free services, of the special and private character involved on this record, are not performed by these servants of the public at the expense of the public.

For these reasons I am compelled to withhold my assent to the majority report.

34 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 526.
EASTBOUND TRANSCONTINENTAL COTTON RATES.

Submitted March 24, 1915. Decided June 2, 1915.

Proposed withdrawal of compression-in-transit arrangement on cotton from southern California and Arizona producing points to St. Louis, Mo., New Orleans, La., Galveston, Tex., and intermediate territory east of El Paso, Tex., found not justified. Proposed increase in rates justified in part.

E. W. Camp, F. H. Wood, F. B. Austin, and C. W. Durbrow for respondents.

M. K. Young for Imperial Valley Long Staple Cotton Growers' Association.

W. S. Dorman for Salt River Valley Egyptian Cotton Association.

L. S. Atkinson for Minoprio & Company and Kenilworth, Minoprio & Company.

F. A. Jones for Arizona Corporation Commission and Arizona Egyptian Cotton Company.

E. E. Crandall for Callexico Compress Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The principal respondents herein have a rate of 95 cents per 100 pounds on cotton from southern California and Arizona producing points to St. Louis, Mo., New Orleans, La., Galveston, Tex., and the intermediate territory east of El Paso, Tex. Under this rate cotton is forwarded from point of origin in an uncompressed state and the carriers arrange for compression in transit without additional charge, an allowance of 10 cents per 100 pounds to cover the cost of compression being included in the rate. The term uncompressed cotton, as here used, will be understood to mean cotton in loosely compressed bales as it comes from the gin. By schedules filed to become effective October 5, 1914, respondents sought to withdraw the present rate and transit arrangement and to establish in lieu thereof a rate of \$1.15 on uncompressed cotton without the compression-in-transit arrangement, and also a rate of 85 cents on cotton compressed before shipment to a density of 22½ pounds per cubic foot, the latter rate being the equivalent of the present 95-cent rate with the 10-cent allowance for compression deducted. Upon protests of the Arizona Corporation Commission and associa-

tions of southern California and Arizona cotton growers, the Commission on October 2, 1914, suspended the operation of the proposed schedules until February 2, 1915, and later continued the suspension until August 2, 1915.

The shippers have no facilities for compressing to the required density, and it must be compressed to that density before it will be accepted by vessels for transshipment. There are but two compresses in the cotton-producing region in question, namely, the one at Calexico, Cal., and the other at Imperial, Cal. That at the latter point is not now in operation. The practical effect of the proposed tariff changes would be to require shippers to forward their cotton, uncompressed, at the rate of \$1.15, and have it compressed at destination at a charge of probably 10 cents per 100 pounds, making the total cost \$1.25, or 30 cents higher than at present. The southern California growers in the immediate vicinity of Calexico could ship to that point at rates ranging from 5 to 12 cents per 100 pounds, pay the cost of compression there, which is 15 cents per 100 pounds, and then reship it, compressed, to destination at the 85-cent rate, but, as hereinafter appears, certain commercial conditions seem to stand in the way of this manner of shipping. Most of the cotton originates in the Imperial Valley, on the line of the Southern Pacific Company, and that carrier assumed the burden of justifying the proposed schedules. Some Egyptian cotton, however, is produced in the Salt River Valley near Phoenix, Ariz., and prior to the hearing the Santa Fe system republished the 95-cent rate on cotton to be compressed in transit from certain stations in that vicinity. The Arizona Eastern Railroad, however, which also serves that territory, has not taken like action. The Calexico Compress Company intervened at the hearing to show that cotton could not be compressed in California for 10 cents per 100 pounds, the usual cost elsewhere, and that a charge of 15 cents is necessary.

Cotton growing in southern California and Arizona was begun some 10 or 15 years ago. The carriers, at that time, in the absence of a fixed basis for rates on that commodity, and it is said without definite information respecting the circumstances and conditions attendant upon the movement of the traffic, made the rate on cotton to be compressed in transit from this producing territory to the points of destination here involved 95 cents per 100 pounds, the same as had been in force for some years in the reverse direction; that is, from Texas and Louisiana cotton-producing points to Pacific coast terminals. The 95-cent rate has been maintained continuously in both directions since that time. The carriers, it is said, knew little of the cotton situation so far as shipments eastbound were concerned, and assumed when they established the 95-cent

rate in that direction that the circumstances and conditions surrounding the movement of cotton eastbound and westbound were substantially similar, and understood and expected that compresses would be erected in southern California and Arizona which would enable them to have the cotton compressed in transit near the points of origin. No compresses, however, have been built in this producing section at which the cotton can be compressed in transit in the direct line of movement. The result is that the eastbound cotton must be hauled to San Antonio and Houston, Tex., before it reaches a compress. In other words, an unusually large portion of the haul is performed on the uncompressed cotton. This has resulted in a waste of equipment, as uncompressed cotton averages about 24,000 pounds per car, while that compressed can be loaded to 40,000 pounds per car. Respondents contend that as they established the eastbound rate on the erroneous assumption that the cotton would be compressed near points of origin, they are practically moving uncompressed cotton from southern California and Arizona at rates intended to apply on compressed cotton.

Cotton from Texas to Pacific coast terminals is compressed within a short distance of its point of origin, and therefore moves in a compressed state for the greater part of the distance. The average carload weight westbound is 38,000 pounds, and the movement in that direction is greatly in excess of that eastbound. It is contended that the eastbound movement occurs during a period when there is a shortage of cars, while the westbound movement occurs when quite a number of empty refrigerator cars are available for loading to California; also that the westbound rate is on a competitive basis and is depressed by influences which are not present in so far as the rate in the opposite direction is concerned. There is a considerable movement of cotton from Texas producing points to Galveston for transshipment by vessels operating through the Suez Canal to the Orient, and the rate made by this route must be substantially equalized by the route to the Orient via rail to California terminals and thence by steamer across the Pacific Ocean. This competition, it is said, fixed the rate from Texas producing points to California terminals at 95 cents. There is substantially no domestic consumption at the terminals. The 85-cent rate proposed on compressed cotton is, as we have stated, practically the present 95-cent rate with the 10-cent compression-in-transit allowance deducted, and respondents point out that notwithstanding the different conditions which favor westbound traffic the rate eastbound is on the same basis as westbound. They contend that the rate of \$1.15 on uncompressed cotton represents a reasonable differential above the rate on compressed cotton.

Respondents offer the following table of comparisons to show that the proposed rates are reasonable. A considerable portion of the cotton moves to Galveston for export, and that point is selected as a typical destination:

From—	To—	Distance.	Rate.	Average loading.	Per car earnings.	Per car-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Pounds.</i>		<i>Cents.</i>
Calxico, Cal.....	Galveston, Tex.....	1,555	85	24,400	\$207.40	12.3
El Paso, Tex.....	Houston, Tex.....	829	52	38,000	197.60	23.8
Montrose, Ark.....	St. Louis, Mo.....	474	45	38,000	171.00	36.0
Georgetown, La.....	do.....	605	55	38,000	200.00	34.5
Do.....	Memphis, Tenn.....	298	45	38,000	171.00	57.3
Shreveport, La.....	Kansas City, Mo.....	633	43	38,000	163.40	25.8
Calxico, Cal.....	Galveston, Tex.....	1,555	85	40,000	340.00	21.9
			115	24,400	280.60	18.0

¹ Present rate less compression allowance.

• Proposed rates.

Calexico, where, as stated, the only compress now in operation is located, is on a loop-shaped branch of the line of the Southern Pacific Company in the most western part of the Imperial Valley, and as the points at which cotton is grown are generally east of that point the movement thereto for compression would involve a back haul. Respondents assign as one of their reasons for proposing the withdrawal of the present compression-in-transit rate their desire to free themselves from the performance of and the responsibility for all incidental arrangements and privileges, and to confine themselves to strictly transportation services. They contend that the responsibility lies with the shipper to pack and prepare his goods for shipment and that compression is not a service which can be demanded by shippers or required by this Commission as a matter of right. However this may be, these carriers are not here proposing to change or withdraw from this practice as to cotton westbound, which they have voluntarily established and maintained for a number of years, and under which a large and apparently satisfactory class of traffic has grown and moves.

Protestants say that the proposed rate on uncompressed cotton will be prohibitive, and seek to show that compression in transit is a commercial necessity and vital to the industry. Compression in transit is a general practice throughout the cotton-producing sections of the country, and shipments are made on through bills of lading with the drafts attached. Protestants state that unless the practices which prevail generally throughout the country are observed in connection with the traffic here involved, it will be impossible for them to finance the movement of their cotton crop and compete with other producers; in other words, that the commercial customs in general usage elsewhere must prevail in the producing regions of southern California

and Arizona. Protestants admit that their geographical location places them at some natural disadvantage, but contend that the grower ought to be assisted by liberal rates and arrangements rather than discouraged by the proposed exactions. They point to various transit arrangements accorded by respondents on other kinds of traffic and in view of the alleged commercial necessity contend that compression in transit should be required of the carriers. In this connection respondents, as above stated, insist that compression is a service completely apart from transportation, and that the obligation is upon the shipper to properly prepare his commodity for shipment. With this we might agree if we were here asked as an original proposition to require the establishment of the compression-in-transit arrangement. The reason for the proposed tariff change and the ground upon which they now seek to justify it lie in respondents' desire to discontinue handling this traffic without what they conceive would be just and reasonable compensation, and their testimony goes mainly to this point. There is no evidence that the practice of stopping cotton for compression is unduly burdensome to them or that it is productive of any hardship. Wherever cotton is grown the practice prevails, and as hereinbefore stated, respondents have maintained it on the traffic here in question for many years and still continue it westbound. Therefore, upon a careful consideration of all the facts, circumstances, and conditions appearing of record we are of the opinion and find that respondents have not justified the changes in practices and rates proposed in the schedules under suspension, and an order will be entered requiring their cancellation. In reaching this conclusion, however, we have not lost sight of the facts herein recited showing that the conditions surrounding the movement of this commodity eastbound are not so favorable as to volume, loading, etc., as those obtaining westbound. The difference in service in our opinion justifies a somewhat higher rate eastbound, and we find that a reasonable rate from and to the points in question for the transportation of cotton to be compressed in transit would be \$1.05 per 100 pounds, which respondents may establish upon statutory notice.

No. 6730.¹
LOUISIANA SUGAR PLANTERS' ASSOCIATION
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted on reargument February 11, 1915. Decided June 2, 1915.

Upon reargument, report and order in this case adhered to.

W. A. Glasgow, jr., for American Sugar Refining Company.

R. V. Fletcher for Illinois Central Railroad Company.

R. Walton Moore for Mobile & Ohio Railroad Company.

SUPPLEMENTAL REPORT ON REARGUMENT.

CLEMENTS, Commissioner:

The original report in these proceedings appears in 31 I. C. C., 311. Upon a petition filed by the American Sugar Refining Company, intervener, a reargument was ordered and had, and the case is now submitted again upon the same record upon which the original report and order were based.

The only finding of fact which is questioned is the ultimate conclusion that the charging of rates on imported blackstrap molasses from the ports of New Orleans and Mobile which are lower than the rates charged on domestic blackstrap from the same ports is not unjustly discriminatory against domestic blackstrap.

Counsel for the intervener insist that this case is unlike the *Import Rate case*, 162 U. S., 197, cited in the original report, for the reason that in that case the import traffic moved under a through bill of lading from the foreign point of origin and would have moved to destination wholly by water if the rail carrier had not made a lower rate from an intermediate port than that it charged on domestic traffic from the same port. While it is true that the import traffic involved in that case could and probably would have moved all the way to destination by water if the carrier had not made a lower rate than that it charged on domestic traffic by rail from the same intermediate port, it is also true that in the instant case the imported

¹ The proceeding also embraces complaints in—No. 6730 (Sub-No. 1), *Leon Godchaux Company, Limited, v. Illinois Central Railroad Company et al.*; No. 6730 (Sub-No. 2), *Same v. Illinois Central Railroad Company et al.*; Investigation and Suspension Docket No. 440, *Import Rates on Blackstrap Molasses from Mobile, Ala., and New Orleans, La.*

product could not move at all from the port of entry to interior destinations in competition with the domestic product but for rates somewhat lower than the domestic rates. We therefore have here a case where it is to the interest of both carriers and consumers that the rate should be made low enough to make it possible for the imported product to move, thus bringing the case clearly within the principle of the *Import Rate case*.

It is said, however, that the mere fact that goods were imported at some time in the past does not entitle them to a lower rate than that charged on goods produced in this country; but conceding that to be true the rates on blackstrap here involved apply only where the blackstrap is pumped from tank steamers into storage tanks on the railroad right of way and then pumped from those tanks into the tank cars in which it is shipped by rail from the port, the identity of the imported shipment being preserved. When imported goods have been mingled with and have become a part of the general property of the country, no difference can be made between the rates on such goods and goods of domestic origin for the reason that there can in such event be no certainty of identity. Carriers and shippers are both responsible for misapplication of the import rates to domestic shipments by commingling the imported products with the domestic, or otherwise.

The fact that the rail transportation from the port is not under a through bill of lading is not material. While the traffic involved in the *Import Rate case* did move under a through bill of lading, that fact, as clearly appears from the reasoning of the court, did not affect the conclusion. Nor should the possibility of cheating by pumping domestic blackstrap into the storage tanks and thus defeating the published rate on domestic blackstrap outlaw altogether a practice reasonable and lawful in itself. No tariff is self-operative to the effectual prevention of the possibility of fraud. Carriers must take the necessary precautions to preserve the integrity of published rates.

The reargument has not convinced us that the orders made in these proceedings should be set aside.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 530.
RULES GOVERNING THE TRANSPORTATION OF POTATOES IN REFRIGERATOR EQUIPMENT.

Submitted April 1, 1915. Decided May 25, 1915.

Proposed change in wording of rule with respect to charges for rental of insulated cars found to have been justified. Order of suspension vacated.

J. F. Finerty for respondents.

G. P. Boyle for protestants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In *Rental Charges for Insulated Cars*, 31 I. C. C., 255, the Commission found not to be unreasonable a proposed charge of \$5 per car per trip for the use of a refrigerator car in the movement of potatoes from points of origin in Minnesota and neighboring states and permitted to become effective tariffs naming rates on potatoes which contained the following provision:

Rental charge on insulated cars.—When shipper orders a refrigerator or other insulated car to be heated by him or to move without heat, a charge of \$5 per car per trip will be made for the use of the car and will accrue to the owner thereof.

By tariff filed to become effective October 15, 1914, the respondents proposed to amend the above rule by eliminating the words "and will accrue to the owner thereof." Upon protests filed by potato dealers in Chicago, Ill., Kansas City, Mo., Minneapolis, St. Paul, and other points in Minnesota and Wisconsin, as well as the Union Refrigerator Transit Company, the schedule proposing the change in the provision was suspended until August 12, 1915.

The respondents rely upon the finding of the Commission in *Rental Charges for Insulated Cars, supra*, that when a refrigerator car is used in the shipment of potatoes they are entitled to \$5 on account, among other things, of the empty haul service, the lighter loading of the car, and comparatively short mileage made by refrigerator equipment. The present record contains no satisfactory explanation as to how the words now sought to be eliminated became incorporated in the rule. In *Rental Charges for Insulated Cars, supra*, the only issue before us was as to the reasonableness of

the proposed charge. It appears that similar rules are found in the tariffs of carriers in the states of Maine and Michigan, which rules do not contain the words "and will accrue to the owner thereof."

As we understand the proposed rule it does not increase or decrease the charges to be collected by the carrier or to be paid by the shipper; under the present rule as well as under the proposed rule \$5 must be collected for the use of a refrigerator car. This charge, to avoid discrimination, should be uniform and collected from every shipper who has the use of a refrigerator car. The duty of the carrier is to furnish the equipment. If any carrier does not perform its duty in this respect, and a shipper puts into the carrier's service one of his own refrigerator cars, he may be entitled to an allowance therefor. The amount of the allowance, however, must be fixed and specifically provided for in the carrier's tariffs. There should be no discrimination between shippers using railroad, private car line, or privately owned refrigerator cars, and the proposed rule reduces to a minimum the probability or possibility of discrimination.

We are of opinion that under the circumstances shown the respondents have justified the proposed change in the provision under consideration, and the order of suspension will be vacated.

34 I. C. C.

No. 6414.
CALIFORNIA PINE BOX & LUMBER COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

No. 7020 and No. 7020 (Sub-No. 1).

SAME

v.

SAME.

Submitted January 21, 1915. Decided May 25, 1915.

Rates charged for the transportation of four carloads of box shooks from Williams, Ariz., over interstate routes to Clifton, Ariz., found to have been unreasonable. Reparation awarded.

F. A. Jones and *A. Larsson* for complainant.

F. H. Wood for Southern Pacific Company.

Hawkins & Franklin for El Paso & Southwestern Company.

T. J. Norton and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

R. K. Minson for Arizona & New Mexico Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant in these cases is a corporation engaged in selling box material at San Francisco, Cal. By complaints, filed December 12, 1913, and June 15 and September 19, 1914, it alleges that defendants charged an unjust and unreasonable rate for the transportation of four carloads of box shooks over interstate routes from Williams, Ariz., to Clifton, Ariz. Reparation is asked and the establishment of a reasonable rate for the future. A rate of \$8.80 per ton is suggested. The cases were heard together and will be disposed of in one report.

No. 6414 involves one shipment, which moved from Williams December 10, 1910, via Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, to Deming, N. Mex.; El Paso & Southwestern Railway to Hachita, N. Mex.; Arizona & New Mexico Railway to Clifton. The shipment weighed 51,500 pounds. Charges

were prepaid in the sum of \$355.35, at a rate of \$13.80 per ton, or 69 cents per 100 pounds. The claim was first filed December 9, 1912. No. 7020 involves two shipments, weighing 44,780 pounds and 47,820 pounds, respectively, over the same route and at the same rate, February 18, 1913, and November 3, 1913. Charges were collected on the first of these shipments in the sum of \$308.98 and in the sum of \$329.96 on the second.

No. 7020 (Sub-No. 1) involves one shipment weighing 50,600 pounds which moved from Williams May 8, 1914, via Santa Fe to Phoenix, Ariz.; Arizona Eastern and Southern Pacific lines to Lordsburg, N. Mex.; Arizona & New Mexico to Clifton. Charges were collected originally in the sum of \$440.22, at a rate of 87 cents per 100 pounds. The routing adopted was not directed by the shippers, and the participating carriers subsequently refunded \$91.08 for "overcharge account of error in route," thereby reducing the charges to \$349.14, the amount that would have accrued if the shipment had been forwarded over the route through Deming.

The rate from Williams through Deming was a combination rate of 69 cents, composed of a commodity rate of 23 cents per 100 pounds, minimum 30,000 pounds, from Williams to Deming, and a commodity rate of 46 cents, minimum 40,000 pounds, from Deming to destination. The rate through Phoenix was a combination of \$1.02 per 100 pounds, composed of a commodity rate of 28 cents, minimum 40,000 pounds, from Williams to Maricopa, Ariz., a class B rate of 44 cents, applicable under exceptions to the western classification, from Maricopa to Lordsburg, and a class B rate of 30 cents from Lordsburg to Clifton. The shipment that moved over the route through Phoenix therefore was undercharged \$75.90.

Williams is in northern Arizona, between Ashfork and Flagstaff, on the main line of the Santa Fe. Clifton is on the Arizona & New Mexico in the southeastern part of the state, near the New Mexico line, 70 miles northwest of Lordsburg, situated on the main line of the Southern Pacific. Hachita, N. Mex., is a few miles southeast of Lordsburg and southwest of Deming. The Santa Fe has two available routes for shipments to Clifton: One east to Belen, N. Mex., thence south to Deming; the other west to Ashfork, Ariz., thence south to Phoenix. The connection at Phoenix is with the Arizona Eastern, a subsidiary of the Southern Pacific, which delivers to the Southern Pacific at Maricopa. The Santa Fe at Deming connects with the Southern Pacific and the El Paso & Southwestern.

The rate of \$8.80 per ton suggested, 44 cents per 100 pounds, is the rate maintained from Williams through Phoenix to Globe, Ariz., pursuant to our order in *Saginaw & Manistee Lumber Co. v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 119, which involved rates from points in northern Arizona, including Williams, to points in southern Arizona,

including Globe, in comparison with rates to the same points from San Pedro, Cal. Arizona was at that time still a territory. Globe is northwest of Clifton on the Arizona Eastern Railroad, but is situated relatively the same for shipments from Williams, as the Arizona Eastern connects with the Southern Pacific at Bowie a few miles west of Lordsburg. Clifton is 571 miles from Williams over the short route through Phoenix and Maricopa; Globe, 577 miles. Other rates prescribed from Williams were 28 cents per 100 pounds to Tucson, 339 miles; 36 cents to Bisbee, 451 miles; 36 cents to Naco, 440 miles. The rates prescribed took effect September, 1910, but box shocks were omitted from the list of articles to which they applied until May 19, 1913, when they were restored to the list. The omission was declared unreasonable in *Arizona Lumber & Timber Co. v. A., T. & S. F. Ry. Co.*, Unreported Opinion No. A-920, and reparation awarded.

The *Saginaw & Manistee* case involved a question of discrimination against Williams in favor of San Pedro. Lumber was shown to move by water from Oregon and Washington to San Pedro and by rail thence to Globe at a rate of \$10 per ton for the rail movement. We considered the shorter distance from Williams to Globe by way of Phoenix and Maricopa and on that ground prescribed a rate of \$1.20 lower from Williams than from San Pedro. The rate from San Pedro to Clifton was and is \$12 per ton. The Santa Fe meets this rate over its long route through Deming. The \$1.20 differential, Williams under San Pedro, to Globe applied to the \$12 rate from San Pedro to Clifton would give a rate of \$10.80 from Williams to Clifton. Defendant Santa Fe concedes that \$10.80 per ton would be a reasonable rate from Williams to Clifton over the short route through Phoenix, but denies that it would be reasonable over the longer route through Deming. Complainant contends that the rate should not exceed \$8.80 per ton over either route.

Over the short route through Phoenix the hauls to Globe and Clifton are identical up to Bowie. The conditions remain the same beyond Bowie to Lordsburg. From Lordsburg north to Clifton the conditions are substantially the same as the conditions from Bowie north to Globe. The Arizona Eastern to Globe and Arizona & New Mexico to Clifton both depend largely on the mining industry for their traffic. If the Arizona Eastern is considered an independent road, both points involve three line hauls from Williams. Under these circumstances the rate from Williams through Phoenix to Clifton should not exceed the rate from Williams through Phoenix to Globe, and we find that the rate assailed is unreasonable to the extent that it exceeds \$8.80 over that route, which rate will be presented as a maximum rate for the future.

The combination rate of \$13.80 over the longer route through Deming violates the long-and-short-haul rule of the fourth section, in that it exceeds the \$12 rate maintained over the same route from San Pedro. No hearing has been had on this point, but the Santa Fe admits that the \$13.80 rate is unreasonable to the extent that it exceeds the San Pedro rate.

The Santa Fe's rate from Williams to Deming is \$4.60 per ton, as previously stated, which rate was voluntarily established. The haul from Deming to Clifton is a joint haul, 57 miles from Deming to Hachita over the El Paso & Southwestern and 109 miles from Hachita through Lordsburg to Clifton over the Arizona & New Mexico, a total of 166 miles. The rate for this movement is \$9.20 per ton. A shorter route is available from Deming to Clifton: Southern Pacific to Lordsburg, Arizona & New Mexico thence to Clifton, 130 miles altogether. The ton-mile earnings of the \$13.80 rate and of the several factors composing it are as follows:

	Miles.	Rate per ton.	Revenue per ton-mile.	Earnings based on average weight of shipments, 48,675 pounds per car.	
				Per car.	Per car-mile.
			Cents.		Cents.
Williams to Clifton.....	730	\$13.80	1.893	\$335.86	46.0
Williams to Deming.....	564	4.60	.815	111.95	19.6
Deming to Clifton.....	166	9.20	5.575	223.91	134.0

The record indicates that the Arizona & New Mexico secures its full local rate of \$6; the El Paso & Southwestern, \$3.20.

Box shooks are made from low-grade lumber, and are less valuable than the average grades of lumber, but usually take lumber rates. The record indicates that the four cars involved are the only shipments of box shooks from Williams to Clifton during the last 12 years, although complainant states in its brief that one other car has moved. There is no consumption of box material at Clifton other than that by the consignee in this case, which uses box shooks to make crates or boxes for oil cans. Defendant Arizona & New Mexico Railway fears that if the rate on box shooks is reduced other lumber rates will be reduced. The annual reports of the Arizona & New Mexico show that its tonnage of forest products for the year 1914 constituted only 12.84 per cent of its total freight tonnage. Apparently, moreover, most of the forest products handled consist of timbers for use in mines. The lumber and lumber article mixtures handled appear not to exceed 10 per cent of the forest products tonnage, so that the lumber and lumber mixture tonnage

over this line is less than 2 per cent of the total tonnage. A reduction in the rate on box shooks, even if extended to all lumber and lumber mixtures would not seriously affect this carrier's revenue.

Defendants' witness testified that traffic conditions on the Arizona & New Mexico Railway were less favorable at present than they have been for many years. The European situation is said to have curtailed the market for mine products. One mine is said to have closed down. A loss of traffic amounting to 55,000 or 60,000 tons of coal per year is alleged because of the erection of a new smelter which consumes only oil. Comparison of this company's annual reports for 1914 and 1913 discloses a total loss of tonnage in coal and coke of 45,000 tons, principally in coke. On the other hand, an increase in oil tonnage appears from 53,700 tons in 1913 to 73,704 tons in 1914.

The average revenue per ton of freight carried over the Arizona & New Mexico Railway in 1914 was \$2.17. The revenue per ton for the transportation of box shooks under the rate assailed was nearly 300 per cent greater. The average revenue per ton-mile for the year 1914 was 2.71 cents; the ton-mile revenue from a rate of \$6 from Hachita to Clifton was 5.51 cents. The company's ratio of operating expenses to operating revenues was 48.96 per cent in 1914. It has a substantial reserve fund, and in 1913 and again in 1914 paid a dividend of 10 per cent upon all of its outstanding common stock.

Upon all of these facts we find that the rate assailed was and is unreasonable over the route through Deming to the extent that it exceeded and exceeds \$10 per ton, which rate will be prescribed as a maximum for the future.

We further find that complainant made the shipments in accordance with the foregoing statement of facts and paid charges thereon at the rates found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates herein found reasonable, and that it is entitled to reparation from the Atchison, Topeka & Santa Fe Railway Company, the El Paso & Southwestern Company, and the Arizona & New Mexico Railway Company, in the sum of \$273.79, with interest from December 12, 1913, and from the Atchison, Topeka & Santa Fe Railway Company, the Arizona Eastern Railroad Company, the Southern Pacific Company, and the Arizona & New Mexico Railway Company in the sum of \$126.50, with interest from June 2, 1914, which award takes into consideration the \$91.08 refunded on the shipment forwarded through Phoenix as well as the undercharge of \$75.90 thereon.

Appropriate orders will be entered.

No. 5889.
FURNITURE MANUFACTURERS ASSOCIATION OF
GRAND RAPIDS

v.
ANN ARBOR RAILROAD COMPANY ET AL.

No. 6051.
ROCKFORD MANUFACTURERS & SHIPPERS' ASSO-
CIATION

v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 12, 1914. Decided June 2, 1915.

Rates on furniture from Grand Rapids, Mich., and Rockford, Ill., to Pacific coast terminals not found to be unreasonable or unduly discriminatory.

E. L. Ewing and *F. L. Williams* for Furniture Manufacturers Association of Grand Rapids.

C. S. Bather for Rockford Manufacturers & Shippers' Association, and interveners, National Furniture Manufacturers Association of America.

R. H. Countiss for Transcontinental Freight Bureau.

L. T. Wilcox for Transcontinental Freight Bureau lines.

F. G. Wright for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

Theodore Schmidt for Grand Rapids & Indiana Railway Company; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

On July 20, 1912, there was filed by the Transcontinental Freight Bureau, to become effective on September 2, 1912, a tariff naming, among other rates, advanced rates to be applied to the transportation of furniture from eastern points of manufacture to various points in California, Oregon, and Washington, hereinafter referred to as the Pacific coast terminals. The entire tariff was suspended by

order of the Commission, and as the result of formal hearings and informal conferences many of the increased rates under suspension were satisfactorily adjusted. Of the numerous articles involved, the chief items as to which no agreement was reached were furniture, tin cans, and lard pails.

The rate proposed in those tariffs on mixed carloads of furniture from Grand Rapids, in the state of Michigan, to the Pacific coast terminals was \$2.52 per 100 pounds, being an increase of 30 cents over the rate then in effect. In our report in that proceeding, *Transcontinental Commodity Rates Westbound*, 26 I. C. C., 456, 462, referring to these rates, we said:

Upon careful consideration of the evidence on this item we are not convinced that the proposed rates are unreasonable. It is therefore our opinion that they should be permitted to go into effect.

The advanced rates became effective and shortly thereafter the first of the above-entitled complaints was filed. It attacks as unreasonable and discriminatory the rate of \$2.52 applicable on furniture in mixed carloads from Grand Rapids to Pacific coast terminals. The same allegation is made with reference to the rate of \$2.45 from Rockford, in the state of Illinois, in the complaint subsequently filed by the manufacturers and shippers' association of that city. These same rates, as just stated, were among those involved in the case just cited, and while their history is there shown in detail it may be briefly restated, as follows:

Early in 1912, as the record shows, the carriers at a meeting held in Chicago examined their Pacific coast terminal tariffs with the object of eliminating therefrom commodity rates on articles that were not subject to water competition between Atlantic and Pacific coast ports or which were not shipped in from foreign countries. The mixed carload rate on furniture to the terminal points is referred to of record as "one of the most glaring examples" of articles that were supposed to be water competitive but which were not so in fact. The rate at that time was \$2.20, and it applied from the entire territory intermediate to the Atlantic seaboard and Colorado. In the new adjustment the rate from New York was made \$2.65; from Grand Rapids, \$2.52; and from Rockford, \$2.45. These rates are the third-class rates. The minimum weight applicable on cars of any size to California terminals is 12,000 pounds; to north Pacific coast terminals the shipments are subject to rule 6-B of western classification, which provides for a minimum weight of 12,000 pounds on a 36-foot car, 13,440 pounds on a 40-foot car, and 17,040 pounds on cars 50 feet or over in length.

The allegation of discrimination advanced by Grand Rapids furniture dealers is based on the fact that (1) while bedroom and dining-

room furniture of certain limited values may be shipped in straight carloads at rates of \$1.50 to \$1.75, respectively, the same articles, when shipped in a mixed car, take a rate of \$2.52; (2) while the minimum weight applicable on shipments to California terminals is 12,000 pounds, regardless of the length of the car, because of the application of rule 6-B of western classification to shipments to the north Pacific coast terminals, the minimum weights to the latter destinations vary with the length of the car; and (3) the rates on straight carloads of furniture to the north Pacific coast terminals are less than to the California terminals. The complainants are particularly interested in the rate on mixed carloads of furniture, and it is to this item in the tariffs that we shall devote our special attention.

The record shows that about 50 furniture factories are in operation at Grand Rapids, having in their employ about 10,000 men and annually producing furniture valued at about \$15,000,000. The output of these factories consists almost exclusively of medium and high grade furniture; at some towns in the near vicinity of Grand Rapids cheaper furniture is manufactured. Twice a year, in January and July, exhibits are held at Grand Rapids, at which several hundred furniture manufacturers throughout the country have their samples on display and to which retailers come to make their selections and place their orders. It is stated of record that 40 to 50 per cent of the product of Grand Rapids is disposed of at these semiannual sales.

The record shows that the industry at Grand Rapids has become specialized; that is, no manufacturer undertakes to produce a complete line of furniture. On the other hand, the stock of an ordinary retail store must comprise all kinds and grades of furniture. These retail dealers, moreover, are not ordering furniture in quantity as they did formerly, but rely upon smaller orders from time to time throughout the season. To take care of this trade condition a practice has grown up at Grand Rapids of shipping mixed carloads of furniture from a number of factories intended for one consignee. The car may be loaded and shipped by a manufacturer at Grand Rapids, to whose warehouse the goods of other manufacturers are brought for that purpose, or the goods of several manufacturers may be sent for loading to the car-loading department of the furniture and manufacturers' association. This association, which maintains assembling and loading facilities, is operated without profit and for the benefit of the furniture manufacturers of Grand Rapids and their customers. Goods are handled also for some of the factories located outside of Grand Rapids, such as Holland and Zeeland, and to these manufacturers a charge for the service of 10 cents per 100

pounds is made. In addition to mixed carloads, which, although billed to one consignee, may embrace goods for several consignees, many so-called pool cars, containing goods from several dealers intended for several consignees, are consigned to transfer companies, warehouses, and distributing agencies on the coast.

The practice of shipping mixed cars is of value to the carrier in that it results, as the record shows, in a heavier loading of the cars and in fewer claims for loss and damage; it is also of value to the shippers in that they receive upon less-than-carload shipments the benefit of the carload rate; it also involves a more expeditious service, and the goods arrive in better condition; it enables the retailer also to do a larger volume of business on a smaller investment. One hundred and seventy-three such cars were shipped by the furniture and manufacturers' association of Grand Rapids to Pacific coast terminals in 1912, and 111 in 1913. It is also stated that an equal or greater number of such cars were shipped by individual factories. An exhibit filed of record shows that several of these mixed cars contained case goods, tables and stands, chairs and stools, bookcases, desks, upholstered furniture, china, music, and filing cabinets. One dealer in San Francisco received in 11 such mixed or pool cars shipments weighing in the aggregate about 7,605 pounds; at Portland, in 9 such cars, a dealer received shipments weighing but 3,870 pounds; and at Seattle, in 4 such cars, a dealer received shipments weighing 2,865 pounds. Other exhibits indicate that frequently in one of these mixed and pool cars, although loaded to the minimum, the freight intended for some individual dealer on the coast will consist of a single piece of furniture.

Comparison is made with the earnings on automobiles and vehicles, household goods, liquors, stoves, woodenware, etc.; household goods, as is generally known, are carried at low rates, and the three commodities last named are said to be water competitive. In determining the earnings on all these commodities the minimum weights applicable under the tariffs were used, while as to furniture the actual weights of shipments were used. Another exhibit compiled from original paid freight bills shows actual earnings on 16 cars containing rubber fruit-jar rings, baseball bats, glucose, gocarts, etc., from various points of origin to destinations on the Pacific coast. Manifestly such comparisons as these are not helpful in determining the reasonableness of the rate on furniture in mixed carloads from Grand Rapids to Pacific coast terminals. Nor is there anything of record that convinces us that the rate of \$2.52 now in effect is unreasonable.

The principal allegation of discrimination in the Grand Rapids complaint lies in the fact that the rates on straight carloads of furniture to the north Pacific coast terminals are less than to the Cali-

for California terminals, and in the application of rule 6-B, providing, on shipments to the north Pacific coast terminals, for graded minimum weights, while the minimum to California terminals is 12,000 pounds for any size car. There are a number of factories on the north Pacific coast making furniture of a low grade, and the lower rates on the straight carloads of cheaper furniture from the east were made in order that the eastern factories might continue to compete with the coast factories. There are eight furniture factories at Portland and two at Tacoma, which, while at present engaged in the manufacture of furniture of a low grade, are gradually extending their lines so as to make what is referred to as medium-grade furniture. In the old tariffs the rate to the north Pacific coast points was the terminal rate with a 12,000-pound minimum; under the present adjustment the same classification rate and minimum is applied to the terminals as to the intermediate territory. The lines running to California, as a compromise adjustment, in the alignment of their rates permitted the 12,000-pound minimum to remain at the California terminals. The California lines have 50-foot cars, while the northern lines have no cars of greater capacity than standard 40-foot cars. If the 12,000-pound minimum were made effective to the north coast and those lines were offered more furniture than could be loaded in a 40-foot car, and no 50-foot car were available, they would be obliged to furnish two cars for one.

The record is far from clear as to just what sort of an adjustment Grand Rapids desires. It alleges that the rates based "upon the values of the furniture are unduly preferential and unjustly discriminatory." As we understand the record, Grand Rapids does not manufacture, to any great extent, the grades of furniture that move under the lower valuation and which compete with the furniture manufactured on the Pacific coast. It is said also that as only a limited number of dealers on the Pacific coast can buy straight carloads of bedroom or dining-room furniture the benefit of the lower rates accrues to only a few individuals. There is, however, nothing to prevent the manufacturer at Grand Rapids from shipping straight carloads of bedroom and dining-room furniture, tables, and chairs of the restricted valuation to agents or representatives on the Pacific coast, by whom the distribution may be made to several consignees, and the record shows that this is frequently done. The value of a mixed car of furniture is between \$2,500 and \$3,500; some cars contain furniture of the value of \$15,000. As was said in *Transcontinental Commodity Rates Westbound, supra*, "this mixture of furniture is of furniture of the better class, many of the articles being of the highest grade and price in the trade." The record indicates that of all the commodities involved in the case just cited,

both at the informal conferences and at the formal hearings, none had more careful consideration than the rates on furniture. Most of the items of furniture were adjusted satisfactorily to the shippers, and protests as to them were withdrawn. The matter has again had our careful consideration, and from the facts shown of record we have reached the conclusion, and so find, that the rates here attacked are neither unreasonable nor discriminatory. What we have said as to the rates from Grand Rapids applies with equal force to the rates from Rockford. The complaints must, therefore, be dismissed, and it will be so ordered.

No. 6950.

INDIANAPOLIS CHAMBER OF COMMERCE

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted March 19, 1915. Decided June 2, 1915.

The refusal of the lines serving Indianapolis to permit at that point storage in transit on apples not found to result in undue preference or advantage in favor of Chicago, St. Louis, and other western cities at which points storage in transit is permitted by the western lines.

Myers & Gates and *J. Keavy* for complainant.

D. P. Connell for New York Central lines.

L. E. Hinkle for Pennsylvania lines.

B. H. Dally for Vandalia Railroad Company.

L. E. Oliphant for Lake Erie & Western Railroad Company.

M. R. Waite for Cincinnati, Hamilton & Dayton Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this complaint it is alleged that the failure of the lines serving Indianapolis to permit at that city storage in transit on apples from western and eastern points of origin such as is permitted at Chicago, St. Louis, and other western cities on apples from the same points of origin results in charges that are unjust, unreasonable, unjustly discriminatory, and unduly preferential.

24 L. C. C.

The rate on apples from Pacific coast points to all points in central freight association territory is \$1 per 100 pounds. The western lines permit storage in transit at Chicago and at St. Louis and other points west of the Mississippi River on the basis of the through rate from the point of origin plus a transit charge, which is, on traffic eastbound from the Pacific coast, 5 cents per 100 pounds and from western territory, such as Colorado, Utah, and Montana, $1\frac{1}{2}$ cents per 100 pounds. When storage is authorized by the western roads on traffic westbound from eastern points of origin the transit charge is $1\frac{1}{2}$ cents per 100 pounds. In addition to the transit charge, all of which accrues to the western line, there is the charge of the private warehouse for the storage service. The storage of apples in transit at the through rate from point of origin to ultimate destination, either with or without additional charge, is not authorized by tariff at any point by lines serving Indianapolis or, in fact, by any road in official classification territory. A carload of apples from the Pacific coast may be stored in transit at Chicago and later move out to any eastern point on the through rate of \$1 plus a storage-in-transit charge of 5 cents per 100 pounds, making a total charge of \$1.05. The same apples, if stored at Indianapolis and reshipped, for example, to Cincinnati, would be charged the \$1 rate to Indianapolis plus $9\frac{1}{2}$ cents to Cincinnati, or a total rate of \$1.095. To Pittsburgh the total rate would be \$1.17 and to New York \$1.28, as against \$1.05 in each instance if stored in transit at Chicago or St. Louis. An exhibit filed of record shows that to 10 typical points in central freight association territory east of Indianapolis that city is, on apples from the Pacific coast stored in transit at western points, under a disadvantage of from $2\frac{1}{2}$ to $9\frac{1}{2}$ cents per 100 pounds, or from \$7.50 to \$28.50 per car; on apples from Colorado and Utah the difference to the same points would be from $4\frac{1}{2}$ to $7\frac{1}{2}$ cents, or \$13.50 to \$22.50 per car. While the central freight association lines join in the through rates published by the western lines, which provide that transit will be extended on apples subject to the tariffs of the individual carriers, the storage actually takes place on the rails of the western roads with respect to both eastbound and westbound traffic. The eastern roads receive no part of the storage-in-transit charge, nor do they shrink their revenues in any degree under the through rate. All the rates from territory east of the Indiana-Illinois state line to points west of the Mississippi River, excepting transcontinental rates, are based either on the Mississippi River or the Chicago combination, and the eastern lines receive on apples their local rates up to Chicago or the Mississippi River. On apples originating in the west and stored in transit at Chicago, St. Louis, or points west of the Mississippi River the central freight association lines receive their full proportion of the

published rate of \$1, and the apples come to them under exactly similar circumstances, on the same kind of billing, and they receive the same earnings as though the apples had moved directly without storage in transit.

No real attempt has been made in this proceeding to attack the reasonableness of the rates. The issues involved are those of alleged unjust discrimination and undue preference in favor of Chicago, St. Louis, and other western cities. Indianapolis is here asking that the same privileges be accorded by the lines serving it that are granted at the western points by the western lines. That city, located at no great distance from the Illinois-Indiana state line, being a rival and competitor of St. Louis and Chicago, perhaps feels more keenly than do other cities in central freight association territory the result of this transit arrangement. Numerous requests were made upon the carriers, and conferences were held with a view to having tariffs published to provide for storage in transit on apples at Indianapolis. The position of the carriers, then as now, is (1) that the transit service could not be extended to apples and denied to other similar commodities; (2) that the putting into effect of the practice at Indianapolis would result in its extension throughout the entire official classification territory and would mean a substantial decrease in the revenues of the carriers; and (3) the carriers desire to curtail rather than extend transit privileges.

The complaint was brought on behalf of commission merchants, local brokers, and individuals interested in storage warehouses at Indianapolis. In that city are storage warehouses of large capacity, which, it is thought, would be filled with western and eastern apples if storage in transit were permitted at that point. The record indicates that in practically every city in the eastern territory of 25,000 inhabitants there is a cold-storage plant, and no special conditions exist at Indianapolis that would warrant the extension of transit to that point without extending it to all cities in official classification territory. This being the case, it is difficult to see just what benefit Indianapolis would derive from such an arrangement. It is stated of record that the dealers run out of supplies suddenly; that they do not buy until they have to, and then want quick deliveries. If the apples were stored at Indianapolis, the commission men of that city would, it is claimed, be in a position to give buyers the kind of service demanded and could thus consummate sales that they are unable to handle under present circumstances. One commission man in Indianapolis represents three of the largest shippers of apples in the west; these shippers have representatives in various eastern cities, and each is so limited by contract as to be unable to make sales in the territory of other representatives. On western apples, therefore, the

territory of operation is somewhat restricted. But the traffic coming from the west is very small as compared with the traffic that originates within central freight association territory. Approximately 60 per cent of the total output of apples in the United States is grown in what is known as official classification territory, and such of these apples as are there stored now pay the combination of local rates in and out of the storage point. Fifteen per cent of the apple crop of the United States is grown in Ohio, Indiana, Illinois, and Michigan. The carriers contend that if storage in transit be given to growers in the east and the west, it can not consistently be denied to growers in the four states last mentioned, and the extension of the transit service all over the territory would result in very substantial reductions in the revenues of the carriers.

No representative of a western line appeared at the hearing, and we therefore are uninformed from the record as to the reason underlying the action of those lines in establishing this transit service. In any event, the record shows that the practice was inaugurated by them and not by the central freight association lines; that the storage takes place on the rails of the western road with respect to both eastbound and westbound traffic; that on eastern apples the local rate into Chicago is collected by the eastern lines, and when the shipment moves out of Chicago the through rate to the destination beyond is assessed by the western lines; that on apples from Colorado, Utah, Montana, and Missouri points to central freight association territory the lines east of the river receive their full local rate from the river; that on apples from Pacific coast territory stopped in transit at Chicago the central freight association lines get their full division of the \$1 rate, with their local rate as a maximum; and that the central freight association lines do not permit transit on apples in their own territory. In view of these facts we are unable to find that by their action in forming through routes and joint rates with the western lines which permit storage in transit of apples on their own rails the lines serving Indianapolis in refusing to establish storage in transit at that city thereby discriminate against the complainants herein. As we have said, the reasonableness of the rates and of the transit charges is not in issue. The complaint must therefore be dismissed, and an order to that effect will be entered.

No. 6817.

KANOTEX REFINING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted April 7, 1915. Decided June 8, 1915.

The lawfully established interstate rate applies on shipments first billed to an intermediate point within the state of origin and then rebilled to the intended destination in an adjoining state, this plan having been devised for the sole purpose of getting the traffic through to the interstate destination at the rates applicable to and from the intermediate point, the sum of which was materially less than the through rate for the through service.

C. D. Chamberlin for complainant and intervener.

T. J. Norton and *A. A. Hurd* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The question of greatest moment on this record is whether a shipper has a legal right to evade the lawfully published through rate on a shipment moving between points in adjoining states by arranging to bill the shipment on the local rates to and from an intermediate point, instead of using through billing to the ultimate destination. The point at issue will be clearly apprehended from a brief statement of the facts as they are shown of record:

From its refinery at Caney, in the state of Kansas, the complainant ships petroleum oil to its various distributing stations in that and the adjoining states. One of its more important stations is at Woodward, in the state of Oklahoma, to which point the complainant ships its refined petroleum with regularity and in substantial volume. Kiowa is the last point on the rails of the defendant in the state of Kansas that is intermediate to Woodward, and in order to take advantage of the substantially lower level of rates prescribed in that state on refined petroleum, and as the first step in the carriage of the products of its refinery to Woodward, the complainant devised the plan of billing its tank cars to one L. B. Hill at Kiowa. Hill was the agent of the complainant for the sole purpose of acting as the consignee of such shipments and of rebilling them from Kiowa to Woodward. He performed no other duty for the complainant except to pay the freight charges on occasional shipments at the interstate

rate from Kiowa to Woodward; and in such cases he was of course reimbursed by the complainant. In all cases the charges from Caney to Kiowa at the local state rate were paid by the complainant; and the charges at the interstate rate from that point to Woodward, when not advanced by Hill on behalf of the complainant, were collected directly from the complainant at destination.

It was frankly admitted of record that the complainant's cars were billed to Kiowa and then rebilled to Woodward, under the arrangement with Hill, for the sole purpose of securing the transportation to the latter point at a lower aggregate cost than was available under the lawfully published through interstate rate from Caney to Woodward; that Woodward was the intended destination of the shipments, although they were first billed to Kiowa; and that the cars were expected to move to Woodward as a continuous shipment, subject only to the delay incident to the rebilling at the intermediate point. As a matter of fact, the cars were sometimes actually handled from Caney through to Woodward in the same train. There was at Kiowa no transfer of interest, no actual possession taken by Hill, and no constructive possession other than may be involved in the rebilling at Kiowa as described.

Upon the argument counsel for the complainant conceded these facts, and also admitted that the rebilling of the cars at Kiowa "was a plan or course of action devised in order to get the traffic ultimately delivered at Woodward" at a charge that was substantially lower than the lawfully published interstate rate between the point of origin and ultimate destination. So far as this record discloses the products of the complainant's refinery at Caney were not shipped to Kiowa for local delivery or consumption at all. It is to be observed also that the local rate prescribed by the state authorities for the movement of refined petroleum from Caney to Kiowa had not been made applicable by the defendant to the through movement to Woodward.

Upon learning of the plan devised by the complainant for getting its petroleum through to Woodward the defendant refused further to bill the shipments from Kiowa except at the balance of the through interstate rate. It also presented undercharge bills to the complainant for the previous shipments, based on the difference between the rate charged and the through interstate rate. Being thus deprived by the action of the defendant of the opportunity to take further advantage of the lower intermediate rates the complainant commenced to bill its petroleum through from Caney to Woodward. It is well to add that the consignee of these latter shipments, as well as of the previous shipments that were first billed locally to Kiowa and rebilled then to Woodward, was designated as the Kanotex Oil

Company, the name under which the complainant does business at Woodward and elsewhere in the state of Oklahoma.

The complainant refuses to pay the defendant's bill of undercharges on the previous shipments; it denies the right of the defendant to refuse to rebill its shipments from Kiowa to Woodward; it contends that the course pursued by it in securing the delivery of its refined petroleum at Woodward at a charge substantially less than it would have been required to pay had the shipments been billed through to the ultimate destination was entirely lawful; and it also alleges that the through interstate rate on refined petroleum moving from Caney to Woodward is unreasonable and discriminatory.

The Commission has frequently been confronted with the confusion and discriminations arising in various ways out of the differences in state and interstate rates, and in our findings, both formal and informal, we have constantly insisted upon the exaction of the lawfully published interstate rate upon all traffic that was really moving as interstate commerce. These rulings have generally been acquiesced in by carriers and shippers alike. In a number of cases, however, some of which were of recent origin, the question has arisen in one form or another and upon somewhat different facts has reached the courts. The rulings made by the courts are relied upon by the complainant here in support of its contention that, although its refined petroleum moves from Caney for ultimate delivery at Woodward, the complainant, nevertheless, by this plan of rebilling at Kiowa, may lawfully take advantage of the lower local rates and thus avoid the payment of the higher through rate. The complainant asserts it to be within its legal right to divide the through movement into two parts and, through the help of an agent at an intermediate point, to make a separate contract for each movement at the rate lawfully available therefor.

The same contention was made in *Southern Pacific Terminal Co. v. I. C. C.*, 219 U. S., 498. That case involved shipments of cottonseed cake and cottonseed meal originating at points chiefly in Texas, the bills of lading showing the destination to be Galveston. Although it was intended that the cottonseed cake should be manufactured into meal at that point and exported, the contention was nevertheless made that the transportation of the cake and meal ended at Galveston. As to this the court said (p. 526):

The manufacture or concentration on the wharves of the terminal company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether

their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg and San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe v. Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have "actually started in the course of transportation to another state, or delivered to a carrier for transportation."

This principle was reaffirmed in *Ohio Railroad Commission v. Worthington*, 225 U. S., 101, and again in *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111. In the case last cited the Sabine Tram Company, a corporation engaged in the manufacture and sale of lumber at Ruliff, in the state of Texas, sold to the W. A. Powell Company a number of carloads of lumber which were delivered under the terms of the contract, f. o. b. the cars at Sabine, in the same state. This lumber had been purchased by the Powell Company for export. The Sabine Tram Company had no interest in the destination of the lumber after it came into the hands of the Powell Company, although it assumed from its knowledge of the business of the Powell Company, from the character of the lumber and other facts, that it was intended for export. It was held that the movement was foreign commerce from the original point of origin, Ruliff, and that the tariff rate for the carriage of the lumber by rail for export, which exceeded the local rate in effect from Ruliff to Sabine, was lawfully applicable. The court said, at page 126:

The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps in its transportation would be extremely artificial. Once admit the principle and means will be afforded of evading the national control of foreign commerce from points in the interior of a state. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign.

Gulf, Colorado & Santa Fe Ry. Co. v. Texas, 204 U. S., 403, is cited by complainant, but does not support its contention. In that case the Harroun Commission Company purchased two cars of corn at Hudson, in the state of South Dakota, to be delivered f. o. b. at Texarkana, in the state of Texas, after inspection and sacking at Kansas City. The corn reached Kansas City on December 17, 1901, where it was unloaded, sacked, and transferred to the Kansas City Southern Railway. On December 24 the Harroun Company sold to the Hardin Grain Company for delivery at Texarkana two cars of corn, and on December 26 informed the purchaser that the corn

would be sacked at Kansas City and shipped from that point to Texarkana. This corn had been bought by the Hardin Company to be shipped from Texarkana to a purchaser at Goldthwaite, in the same state, pursuant to a contract made on December 23. It was held that the interstate movement from Hudson ended at Texarkana and that the further movement to Goldthwaite was intrastate. The original seller of this grain at Hudson, who paid the freight charges for the movement to Texarkana, did not know of its ultimate destination, if any, beyond that point, nor did the Harroun Company know its ultimate destination beyond Texarkana until after its arrival at Kansas City. So also the Hardin Company, when it contracted for the cars to be delivered at Texarkana, did not know where the grain would originate. The contract between the Hardin Grain Company and the Harroun Commission Company was completed in accordance with its terms when the corn was delivered to the Hardin Company at Texarkana. The two cars were detained at that point five days, and at no time was the Hardin Company under any obligation to ship them farther. The corn might have been consumed locally or shipped to any point, and the purchaser at Goldthwaite might have been supplied with other corn from other sources. These facts clearly distinguish the case from the case at bar, for here the complainant intended the shipment to move from point of origin to a known interstate destination. It was not billed to an intermediate point in order to complete a contract of sale or to await a purchaser in the future to whom it might be reshipped, but in order to secure an advantage wholly unrelated to the movement itself and affecting only the cost to the shipper of the service received.

Complainant further relies on *Chicago, Milwaukee & St. Paul Ry. Co. v. Iowa*, 233 U. S., 334. But in that case the railroad commission of Iowa found as a fact that Davenport was a distributing point for coal shipped by the consignor from points in other states; that the coal was held at Davenport after the consignee had taken delivery, paid the freight, assumed full control, and until sales were made; that the coal might be consumed locally or shipped to points within the state, but that the ultimate destination was determined after the arrival of the coal at Davenport. Upon these facts the state commission held that the movements beyond Davenport were intrastate, and in its judgment the supreme court of the state affirmed that view. The Supreme Court of the United States said the question involved was with respect to the nature of the actual movement in the particular case, and that the record disclosed no ground for concluding that the state court had improperly characterized the traffic there involved. The distinction between this case and that now under consideration is so obvious as to require no further comment.

The admission on the argument by counsel for the complainant, and the fact also appears throughout the record, that the products of the refinery at Caney were first billed to Kiowa in order "to get the traffic ultimately delivered at Woodward" at a charge substantially lower than the lawfully published interstate rate from Caney to Woodward, was accompanied by the contention that "two independent contracts of shipment were made" to accomplish the delivery at the intended ultimate destination, and that, lawful rates being available, this manner of securing the full service desired was legally open to the complainant. We do not take this view of the matter. The billing of these shipments first to Kiowa was simply a step in their transportation to their real destination at Woodward, and the only motive in so billing the traffic was to defeat the interstate rate lawfully applicable to the through service. The through movement was what the complainant desired and what it received at the hands of the defendant, and the fact that it resorted to the device of making two contracts, one to the intermediate point and another from that point to destination, does not affect the real character of the movement. Kiowa was not the intended destination of the shipments, and the billing to and rebilling from that point by the consignor, without taking or intending to take a real possession of the shipments there, were mere *pro forma* and paper transactions without substance, except as they might be a means of getting the through service to Woodward at less than the lawful rate. The frankness of the complainant in laying the facts before us is commendable, because it puts the actual character of the service rendered beyond conjecture and leaves no doubt as to the rate that should have been applied. We can not, however, acquiesce in its contention that it may thus defeat the lawful through interstate rate. To hold otherwise would seriously impair, if not altogether destroy, the effectiveness of the interstate rate structure of the country and make it impossible for this Commission to administer the act to regulate commerce and its various amendments.

This Commission, as hereinbefore stated, has steadfastly adhered to the proposition that on any through carriage of traffic between interstate points the lawfully published interstate rate must be applied by the carrier and paid by the shipper, and that where the through interstate rate in effect between two points is higher than the aggregate of the intermediate rates any plan of first billing to an intermediate point a shipment that is really intended to reach a destination beyond is simply a device for defeating the lawful through rate, and is unlawful. This view is entirely consistent with and is strongly supported by the rulings of the court of last resort in the cases above cited. The defendant, therefore, was entirely within its rights, and

indeed exercised a plain duty under the law and to the integrity of its rate structure, when it refused to continue to rebill from Kiowa shipments of the products of the complainant's refinery at Caney that had reached Kiowa under local billing, but which were intended to be carried thence to Woodward as part of a through movement from Caney. It was also its duty to demand of the complainant the payment of the bill of undercharges based on the through interstate rate, and the complainant can not lawfully refuse promptly to meet the demand if the undercharges are correctly stated.

As heretofore explained, the reasonableness of the through rates on petroleum and its products from Caney to Woodward is questioned by the complainant. The National Refining Company, a Kansas corporation, which ships petroleum and its products from Coffeyville, intervened in the case and also challenged the reasonableness of the rates under which its shipments to Woodward have been made. Coffeyville is grouped with Caney, and, together with other points in the state of Kansas, takes the same rate to Woodward. Prior to March 26, 1913, the rate was 38 cents per 100 pounds, but it was then reduced to 35 cents in order, as is stated upon this record, to harmonize the rate from those points with the rates fixed under our order in *State of Oklahoma v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 42, where we prescribed rates from this Kansas oil-producing territory to certain destinations in Oklahoma. The complainant and the intervener now attack this adjustment as being unreasonable and unduly discriminatory. Inasmuch, however, as the general basis of the oil rates in this territory is before us in a rather comprehensive way in *Midcontinent Oil Rates*, not yet decided, we shall reserve the question of the reasonableness of the rates here involved, and all questions of reparation in case they are found to be unreasonable, until the questions presented in that proceeding are ready for consideration and disposition. No order will be entered herein until our conclusions in the case last mentioned shall have been reached and announced.

34 I. C. C.

PROPORTIONAL CLASS RATES TO IOWA POINTS.

FOURTH SECTION APPLICATIONS NOS. 9867 AND 9992.

Submitted April 12, 1915. Decided June 8, 1915.

Authority granted to establish same scale of proportional class rates as authorized by Fourth Section Order No. 3743, issued in supplemental report in the *Interior Iowa Cities case*, 29 I. C. C., 536, to apply west of the Mississippi River on traffic moving between certain additional interior Iowa cities located on the lines of the applicants between Burlington and Muscatine, Iowa, and points east of the Indiana-Illinois state line.

W. T. Hughes for Chicago, Rock Island & Pacific Railway Company.

C. A. Werlich for Minneapolis & St. Louis Railroad Company.

H. E. Blowney for Chicago, Burlington & Quincy Railroad Company.

C. E. Hilliker for Chicago, Milwaukee & St. Paul Railway Company.

D. N. Lewis for the state of Iowa, protestant.

E. G. Wylie and *F. W. Lehmann, jr.*, for Greater Des Moines Committee.

R. J. Reaney and *J. A. Sprague* for Columbus Junction, Iowa.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By Fourth Section Order No. 3743, issued in the *Interior Iowa Cities case*, 29 I. C. C., 536, we approved a schedule of proportional class rates for application west of the Mississippi River on traffic moving between interior Iowa cities and points east of the Indiana-Illinois state line which were higher for shorter than for longer distances. This order did not, however, cover rates to certain interior intermediate points in Iowa located on the lines of the Chicago, Rock Island & Pacific Railway Company, hereinafter termed the Rock Island, between Burlington, Iowa, and Rock Island, Ill., and on the line of the Muscatine North & South Railway Company between Burlington and Muscatine, Iowa. By the above-numbered applications, dated January 23 and April 7, 1915, respectively, relief to the same extent is now sought from the operation of the rule of the fourth section of the act to regulate commerce as amended June 18, 1910, to cover these points.

These applications ask for authority to cancel the through rates between points east of the Indiana-Illinois state line, as designated in western trunk line tariff No. 1-H, W. H. Hosmer's I. C. C. No. A-864, and Fruitland, Letts, Fredonia, Columbus Junction, Bard,

Wapello, Morning Sun, Garland, Mediapolis, Sperry, and Latty, Iowa, on the Rock Island; and between points east of the Indiana-Illinois state line, as described in item No. 260 of the same tariff, and Round House, Hahns Switch, Fruitland, Garden City, Grand View, Wapello, Elrick Junction, Oakville, Huron, and Kingston, Iowa, on the line of the Muscatine North & South Railway, and thereby charge higher rates to and from these points than apply to and from Burlington or Muscatine. The proposed basis, which is the same as that approved in the *Interior Iowa Cities case*, is as follows:

The through rates to and from said intermediate points are not to exceed the rates between points east of the Indiana-Illinois state line and upper Mississippi River crossings plus the Iowa distance scale of rates between the nearest Mississippi River crossing and the said intermediate points by more than the following amounts, in cents per 100 pounds:

Classes -----	1	2	3	4	5	A	B	C	D	E
Rates -----	2	2	1	1	1	1	1	1	1	1

Protests against the granting of these applications were filed by the Iowa commission and the Greater Des Moines Committee, and a hearing has been had thereon.

For a long time the intermediate points here involved have had the same rates as Burlington, Rock Island, and other Mississippi River crossings, but the applicants contend that this is an unfair adjustment as compared with the basis of rates applicable to other interior Iowa points, as authorized by the Commission. Protestants' principal objection to the granting of the relief sought is that it will result in increases in the rates to these intermediate points and they will, therefore, be unable to avail themselves of charges lower than the published through rates from points east of the Indiana-Illinois state line to Des Moines and other points in Iowa by using the combination of rates now available over certain of said intermediate points.

The Commission has realized the importance of having the same rates from the east to all the Mississippi River crossings with a uniform basis of proportional rates from the Mississippi River crossings to all Iowa destinations as a means of equalizing rates via all routes to all such destinations. This was recognized in approving the proportional rates in the *Interior Iowa Cities case, supra*.

The main line of the Rock Island from Chicago crosses the Mississippi River at Rock Island, Ill., and its line extends 90.6 miles through Iowa before it reaches Burlington. The rates to Burlington are the same as to Rock Island. If the Rock Island is to participate in traffic to Burlington it must meet the rates established there by the direct route of the Chicago, Burlington & Quincy Railroad. The distance from Chicago to Burlington via the Rock Island is 272 miles,

while via the Burlington line it is only 206 miles. The Rock Island therefore desires relief from the rule of the fourth section to meet the competition of the more direct route to Burlington, while maintaining higher rates to intermediate points.

The application of the Burlington and the other lines presents a like situation in the opposite direction respecting traffic moving through Burlington to Muscatine and points intermediate thereto, and is supported by the same reasons as are presented on behalf of the Rock Island.

Under the Iowa state distance scale the first-class rate for 90.6 miles is 23.6 cents per 100 pounds, but, as pointed out, the present adjustment accords to these interior intermediate points rates fixed for the Mississippi River crossings. The applicants assert that for the additional service between the river crossings and these intermediate interior points they are entitled to the same compensation that they and other lines receive for hauling traffic between the Mississippi River gateways and other stations in Iowa. For illustration, although the distance to West Liberty, Iowa, is approximately the same as to Columbus Junction, West Liberty has higher rates, graded according to distance within Iowa, than has Columbus Junction.

These intermediate points are not situated similarly to Burlington, Rock Island, and other river crossings, and their geographical position, therefore, does not entitle them to the same rates as apply from and to the river crossings. On the contrary, these points are located some distance from the river, and can not be considered in any respect as river crossings. The present adjustment as to these intermediate points is inconsistent with the rate adjustment approved in the *Interior Iowa Cities case*, supra, in which we said:

It follows that as to traffic from eastern cities the through rate arrived at by the use of the two proportionals is the same as the combination of locals through the nearest river crossing. The carriers have proposed, however, to apply these proportional rates from all the upper Mississippi River gateways, and when applied over the greater mileage from the more distant river points or the average of all the river points it will be found to be substantially below the Iowa mileage scale, and therefore less than the combination of locals.

It is our opinion from all the facts disclosed by the record that the applicants have established a special case such as is contemplated by the act, which warrants granting the relief prayed for; and, as the rates proposed are upon the same basis as that which we have approved as to the other interior Iowa points, it follows that said basis of rates as to the points here involved is proper. The relief prayed for should be granted. Fourth section orders will, therefore, be issued in conformity with the conclusions herein announced.

DES MOINES COMMODITY RATES.¹

Submitted January 14, 1915. Decided May 25, 1915.

1. Present commodity rates on agricultural implements, asphalt, cement, bottles, mixed paints, and paper articles from Chicago to Des Moines found to require revision, but for reasons stated in report no order issued at this time.
2. Rates on cherry lumber and glove leather from Chicago to Des Moines found unreasonable to the extent that the rate on cherry lumber exceeds the present fourth-class rate and that the rate on glove leather exceeds the present second-class rate. Reparation denied.
3. Complaints involving class and commodity proportional rates between Des Moines and the Mississippi River on shipments originating at or destined to points east of the Illinois-Indiana state line dismissed without prejudice.

F. W. Lehmann, jr., and E. G. Wylie for complainants.

R. C. Fyfe for all defendants.

J. N. Davis and C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

W. T. Hughes for Chicago, Rock Island & Pacific Railway Company.

C. E. Spens for Chicago, Burlington & Quincy Railroad Company.

W. H. Bremner and F. B. Townsend for Minneapolis & St. Louis Railroad Company.

¹The proceeding embraces complaints in—No. 6943, Greater Des Moines Committee, Incorporated, v. Minneapolis & St. Louis Railroad Company et al.; Fourth Section Application No. 1948; No. 6452, Humane Remedy Company v. Chicago Great Western Railroad Company et al.; No. 6452 (Sub-No. 1), J. K. & W. H. Gilcrest Company v. Chicago Great Western Railroad Company et al.; Fourth Section Applications, No. 2045 and No. 3786; No. 4576, Chamberlain Medicine Company et al. v. Iowa Central Railway Company et al.; No. 4575 (Sub-No. 1), Waterbury Chemical Company v. Chicago, Rock Island & Pacific Railway Company et al.; No. 4575 (Sub-No. 2), Waterbury Chemical Company v. Illinois Terminal Railroad Company et al.; No. 4576, Luthe Hardware Company v. Chicago, Milwaukee & Gary Railway Company et al.; No. 4576 (Sub-No. 1), Luthe Hardware Company v. Chicago, Burlington & Quincy Railroad Company et al.; No. 4576 (Sub-No. 2), H. C. Klingman v. Chicago, Burlington & Quincy Railroad Company et al.; No. 4576 (Sub-No. 3), J. H. Cowrie Glove Company v. St. Paul & Kansas City Short Line Railroad Company et al.; No. 4576 (Sub-No. 4), Harrah & Stewart Manufacturing Company v. Chicago, Rock Island & Pacific Railway Company et al.; No. 4576 (Sub-No. 5), H. C. Klingman v. Grand Trunk Western Railway Company et al.; No. 4576 (Sub-No. 6), Harrah & Stewart Manufacturing Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 4576 (Sub-No. 7), Des Moines Drug Company v. Chicago, Burlington & Quincy Railroad Company et al.; No. 4577, Bryant-McLaughlin Asphalt Paving Company v. Chicago Great Western Railroad Company et al.; No. 4099, Waterbury Chemical Company et al. v. Chicago, Burlington & Quincy Railroad Company; No. 4098, Barber Asphalt Paving Company et al. v. Chicago, Rock Island & Pacific Railway Company et al.; No. 4584, Langan Brothers Company v. Chicago & North Western Railway Company et al.; No. 4601, Port Huron Machinery Company, Limited, v. Chicago, Burlington & Quincy Railroad Company et al.; No. 4271, Davidson Brothers Company v. Chicago, Rock Island & Pacific Railway Company; No. 4271 (Sub-No. 1), Mayer Brothers Construction Company v. Iowa Central Railway Company; No. 4271 (Sub-No. 2), Des Moines Poultry & Butter Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 4271 (Sub-No. 3), H. C. Klingman v. Grand Trunk Western Railway Company et al.; No. 4271 (Sub-No. 4), Bryant-McLaughlin Asphalt Paving Company v. Chicago, Burlington & Quincy Railroad Company et al.; No. 4271 (Sub-No. 5), Des Moines Iron Company et al. v. Iowa Central Railway Company et al.

G. A. Kelly and F. S. Hollands for Chicago Great Western Railroad Company.

Thomas Watters and D. N. Lewis for the state of Iowa.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

These cases, being closely related in subject matter, were for convenience consolidated and heard on one record. The rates involved are of two general classes, (a) proportional rates between Des Moines and the Mississippi River on shipments originating at or destined to points east of the Indiana-Illinois state line, and (b) commodity rates between Des Moines and Chicago and points taking Chicago rates or differentials over or under those rates. For reasons hereinafter explained we shall in this report consider the latter rates only. Certain applications of the carriers for relief from the provisions of the fourth section were also heard at the same time.

The question of the reasonableness of class and commodity rates from Chicago to destinations in interior Iowa has heretofore been considered by us in a number of cases, of which *State of Iowa v. C., St. P., M. & O. Ry. Co.*, 28 I. C. C., 76, and 29 I. C. C., 539, was perhaps the most comprehensive. In that proceeding the commodity rates as well as the class rates between Chicago and interior Iowa points were involved. But upon the record then before us we were unable to arrive at any satisfactory conclusion as to the reasonableness of the commodity rates between those points, and our findings and order therefore dealt only with the class rates. Some of the complaints under consideration here challenge the reasonableness of the commodity rates between Chicago and Des Moines and pray for a readjustment of them upon the same relative basis as was required with respect to the class rates under our original and supplemental reports in the case cited.

At the time that complaint was filed the first-class rate from Chicago to the Mississippi River ranged from 37½ cents per 100 pounds at Clinton and Davenport to 41.7 cents at Keokuk. The first-class rate from Chicago to the Missouri River was then, and is now, 80 cents per 100 pounds. In our report in the case, referring to the adjustment of the rates between Chicago and points in the interior of the state of Iowa, we said (*id.*, p. 80):

In explaining the adjustment of these rates witnesses for the defendant carriers stated that the 60-cent scale of rates from Chicago to the twin cities is applied as a maximum scale of rates from Chicago to points in the eastern portion of Iowa as far west as the line of the Rock Island Railroad passing through Cedar Rapids. West of that line, and as far as the line of the Minneapolis & St. Louis Railroad passing through Marshalltown and Mason City, the 63-cent scale in effect from St. Louis to the twin cities is applied as a maximum scale of rates from Chicago. West of the last-mentioned

line the class rates grade up until the Missouri River scale of 80 cents is met some 75 miles east of the Missouri River. The record shows, however, that the twin city scale of rates from Chicago and St. Louis has been used to fix the rates from Chicago to interior Iowa without reasonable regard to the extent or value of the service.

The conclusion reached upon the record was that class rates constructed on that basis resulted in rates to and from the interior Iowa points that were unreasonable and unduly discriminatory when compared with the rates to the river points on either side of the state. We therefore required the carriers to grade the 80-cent scale of class rates from Chicago to the Missouri River back across the state to the 37½-cent and 41.7-cent scales of class rates at the Mississippi River. The rates have since been readjusted as directed, and the scale of class rates from Chicago or St. Louis to Minneapolis and St. Paul is therefore no longer the basis of the class rates between Chicago and interior Iowa points. The result is a system of class rates to and from those points more in harmony with the service rendered than was the case under the prior method of determining those rates.

The record shows, however, that the twin city basis, formerly followed in fixing the class rates, is still used in determining the commodity rates to interior Iowa points. The rate on bottles from Chicago to Des Moines will serve as an illustration. The rate from Chicago to St. Paul is 17½ cents per 100 pounds; from St. Louis to St. Paul the rate is fixed at 105 per cent of the Chicago rate, or 18½ cents. Bottles are rated fifth class in carloads under the western classification, and the old fifth-class differential of Chicago to Des Moines over the rate from St. Louis was 3 cents. This being added to the 18½-cent rate from St. Louis made a rate on bottles from Chicago to Des Moines of 21½ cents per 100 pounds. This rate, it will be noted, was formerly 2 cents per 100 pounds lower than the class rate on bottles from Chicago. But it is now one-half cent higher than the class rate to Des Moines fixed by the Commission in *State of Iowa v. C., St. P., M. & O. Ry. Co., supra*. The adherence by the carriers to the twin city rates from St. Louis and Chicago as a basis for fixing commodity rates to interior Iowa points, notwithstanding our condemnation of that basis in the case just cited, with respect to the class rates, results in a few instances in commodity rates that are higher than the class rates. The carriers long since promised to correct this condition in their rate structure by canceling such commodity rates as exceed the new class rates, leaving the latter in effect; but no tariffs readjusting these rates have yet been filed.

The complainants before us here refer to the statement in the report in the case cited, 28 I. C. C., 193, 196, to the effect that "ordinarily whatever relation is established for class rates would apply in the case of commodity rates," and they contend that as the class rates have

been graded back from the Missouri River to the Mississippi River a similar plan, in the absence of other controlling conditions, should be followed with respect to the commodity rates. For example, the rate on bottles from Chicago to Des Moines, which is now $21\frac{1}{2}$ cents, as just shown, or one-half cent higher than the class rate, if graded back from the 27-cent rate at Omaha to the 13.1-cent rate at Davenport would be reduced approximately to 20 cents per 100 pounds at Des Moines. The complainants contend that the present basis for determining the commodity rates is altogether wrong and results in an unreasonable and discriminatory rate adjustment. They show that the class rates from Chicago to Des Moines are now approximately 75 per cent of the Missouri River rates and that this is almost the percentage difference in point of distance. Nevertheless under the present system of determining commodity rates the average of such rates from Chicago to Des Moines is considerably in excess of the distance percentage.

The respondents, on the other hand, contend that the commodity rates to and from interior Iowa points are published as specific rates and that the method used in arriving at them is entirely immaterial if the results obtained are just, reasonable, and nondiscriminatory. As commodity rates are ordinarily published to aid the movement of traffic which, because of special or peculiar conditions, will not move freely under the class rates, the respondents maintain that the commodity rates should be fixed with a view to securing an unrestricted movement and without regard to the class rates. They argue, therefore, that the commodity rates in question should be considered with reference to their reasonableness and not in their relation to the class rates, and they point out that in establishing commodity rates carriers frequently must take into consideration the peculiar requirements of particular communities and must meet those requirements by applying on certain commodities rates that are lower than would otherwise be deemed necessary. That of course is a familiar principle; but in this proceeding the respondents have made little effort to show any circumstances and conditions, surrounding the traffic moving to and from interior Iowa points under commodity rates, that are so unusual as to require a basis for determining those rates that differs from the basis which we have required them to make effective for determining the class rates. It is true that in some instances the spread between the rates to the Mississippi River and the rates to the Missouri River is perhaps too narrow to permit of a satisfactory grading back across the state, although this is entirely possible with respect to many of the commodity rates.

The commodity rates particularly complained of by the Greater Des Moines Committee are those shown on the following table which,

for comparative purposes, also shows the former and present class rates to Des Moines on each of the commodities in question. While the grading back across the state, as required in the case cited, has resulted in giving to Des Moines a lower level of class rates, the commodity rates to Des Moines have remained generally unchanged. These rates, as now in effect, are shown on the table in comparison with the present rates on the same commodities to Omaha and to Davenport. Rates are stated in cents per 100 pounds:

From Chicago.	Class.	Class rates to Des Moines.		Commodity rates to—		
		Former.	Present.	Omaha.	Des Moines.	Davenport.
Agricultural implements.....	A	\$0.285	\$0.24	\$0.30	\$0.25	\$0.15
Agricultural implements, hand.....	B	.40	.36	.32	.31	.243
Asphalt, etc.....	D	.155	.14	.115	.12	.074
Bottles, glass jars, etc.....	B	.235	.21	.27	.215	.131
Cement, roofing or paving.....	D	.155	.14	.125	.12	.074
Coal tar.....	D	.155	.14	.11	.105	.074
Furniture.....	B	.40	.36	.32	.265	.243
Railway material.....	B	.235	.21	.17	.135	.105
Iron and steel articles.....	B	.235	.21	.27	.175	.095
Railway track fastenings.....	B	.235	.21	.15	.12	.074
Pig iron.....	D	.155	.14	¹ 3.58	¹ 2.80	¹ 1.45
Pipes, poles, connections.....	B	.235	.21	.185	.165	.095
Linseed oil:						
Eastbound.....	B	.235	.21	.20	.15	.....
Westbound.....	B	.235	.21	.....	.16	.126
Paint, dry earth, barites.....	C	.19	.17	.17	.15	.117
Paint, mixed.....	B	.235	.21	.27	.235	.147
Paper, roofing and lining.....	B	.235	.21	.16	.135	.089
Paper, print.....	B	.235	.21	.20	.18	.11
Wood pulpboard boxes, k. d.....	B	.235	.21	.23	.21	.11
Box board.....	B	.235	.21	.185	.165	.10

¹ Per ton.

As heretofore indicated, these complaints were filed in behalf of but one point in the state, namely, Des Moines. No showing was made of record on behalf of the many other important commercial centers in Iowa. The record therefore does not bring the entire rate situation before us, but only so far as the interests of Des Moines are affected. Without knowing the consequences to other points in Iowa, it is apparent that we ought not to enter any order dealing with Des Moines commodity rates that will require a wholesale readjustment of commodity rates to and from other points in Iowa. Nevertheless it is satisfactorily shown of record that several of the commodity rates to Des Moines as named in the above table are in need of correction. These are the rates now in effect on agricultural implements, asphalt, cement, bottles, mixed paints, and paper articles. On agricultural implements, bottles, and mixed paints the commodity rates are now higher than the class rates; but reduction in those rates to the basis of the class rates would not entirely meet the showing made of record by the complainants, except in the case of the rate on mixed paints. A conference between the parties in interest as to the

proper rates to be applied on all the above-named commodities from Chicago to Des Moines will undoubtedly lead to some agreement that will be mutually satisfactory and that will be acceptable to the Commission. We suggest that such a conference be at once held. In the event, however, of a failure of the parties to agree and to lay their suggestions before us on or before August 1, 1915, the Commission will enter an order upon the present record.

Fourth Section Application No. 1948, filed on behalf of the respondent carriers, in part seeks authority to continue commodity rates from St. Louis to Des Moines which are lower than the rates concurrently applicable on like traffic from Peoria, and also to continue commodity rates from Springfield to St. Paul which are lower than the rates on the same articles to Des Moines. Since the adjustment in the class rates from Chicago and from Peoria and Springfield to Des Moines resulting from our findings and orders in the cases repeatedly referred to in the foregoing pages those departures from the provisions of the fourth section have been eliminated with respect to articles moving to Des Moines under class rates, and we are of the opinion upon the record before us that such violations of that provision should be eliminated also in the case of traffic moving to the same points under commodity rates. Those features of the application will therefore be denied, and the respondents will be required to readjust all commodity rates between Peoria and Des Moines which are now in excess of the rates on the same articles between St. Louis and Des Moines through Peoria, and similarly, to readjust such of the rates between Springfield and Des Moines as exceed rates on the same commodities between Springfield and St. Paul.

DES MOINES' PROPORTIONAL RATES.

The individual petitions consolidated with the complaint of the Greater Des Moines Committee remain to be considered. As we have previously stated, the record involves in part complaints against the proportional rates between Des Moines and the Mississippi River on shipments originating east of the Indiana-Illinois state line. All these proceedings, 13 in number, were brought prior to our decision in the *Interior Iowa Cities case*, 28 I. C. C., 64, and 29 I. C. C., 536. As a result of our findings in that case the entire proportional rate structure has been readjusted, and the conditions which obtained at the time of the filing of these earlier complaints have been altered. Recent changes have also been made by the carriers in their proportional rates from eastern points to the Mississippi River. In view of these changed conditions counsel for the complainants upon argument suggested that all the individual complaints which deal with class and commodity proportional rates be dismissed without prejudice.

To this suggestion we agree. Many, if not all, of those petitions include prayers for reparation. It should be understood, however, that in line with our policy in that respect as expressed in the *Interior Iowa Cities case* reparation will not be awarded in these cases upon shipments moving under rates which have since been reduced in compliance with our orders in this group of cases involving Iowa rates.

CREOSOTE OIL.

The petition of the Humane Remedy Company against the Chicago Great Western Railroad Company attacks the rate on creosote oil in less than carload quantities from Chicago and Chicago rate points to Des Moines. Reparation is asked on shipments moving at various times during the years 1912 and 1913.

Creosote oil, in less than carload quantities, is rated third class in the western classification, and at the time this complaint was filed the third-class rate from Chicago to Des Moines was 40 cents per 100 pounds. It has since been reduced to 36 cents. Under the Iowa and Illinois state classifications creosote oil takes fourth class, and the combination of the fourth-class rates to and from the Mississippi River resulted in lower charges than the through third-class rate from Chicago. The complainant contends that the through rate which thus exceeded the combination of local rates was illegal and excessive.

On behalf of the carriers it was shown that the rating in the Iowa and Illinois classifications are exceptions to the general classification throughout the country, creosote oil, less than carloads, being rated in the western, official, and southern classifications at third class. The reduced third-class rate of 36 cents from Chicago to Des Moines no longer exceeds the combination of fourth-class rates to and from the river, and there is, therefore, no need of further action. The complaint will be dismissed and under the circumstance no reparation will be awarded.

CHERRY LUMBER.

In the complaint of J. K. and W. H. Gilcrest Lumber Company complaint is made against the rates on cherry lumber in less than carload quantities from Chicago to Des Moines. Reparation is asked.

This complaint is in some respects similar to that of the Humane Remedy Company, which we have just considered. Under the western classification cherry lumber, less than carloads, is rated second class, but under the Iowa and Illinois classifications it is rated fourth class. The combination of the fourth-class rates to and from the Mississippi River is less than the through second-class rate from Chicago to Des Moines.

The complainant testified that the better grades of this lumber are generally used for interior finish and woodwork of that nature, and that the price at which it is sold is approximately the same as for first and second clear quartered red oak, although the latter moves under a much lower rate. The testimony of the carriers was to the effect that cherry lumber is in the same group with holly, mahogany, lignum-vitæ, and other foreign woods of value, and that it is therefore unreasonable to compare it with quarter-sawed oak. It is contended that cherry lumber should not be taken from the group comprising foreign woods of value and placed with lower rated lumbers merely because that action has been taken by the states of Iowa and Illinois. It is not clear, however, why cherry lumber should be considered a "foreign wood of value," and that it is not so considered generally is shown not only by the two state classifications, but by the official and southern as well. In each of the four classifications mentioned cherry lumber, less than carloads, is rated fourth class. Upon this record we are of the opinion that the rate on cherry lumber from Chicago to Des Moines should not exceed the present fourth-class rate between those points, and an order to that effect will be entered. The rate on that commodity will then become 27 cents, which will no longer exceed the combination of the fourth-class rates to and from the Mississippi River. We do not find the case one in which an award of reparation should be made.

Fourth Section Application No. 2045 of the Illinois Central Railroad and No. 3786 of the Chicago & North Western Railway seek in part authority to continue through rates on creosote oil and cherry lumber from Chicago to Des Moines which are higher than the aggregate of the intermediate rates to and from Clinton and Dubuque. As we have pointed out, that condition no longer obtains with respect to the creosote oil, and the reduction herein required in the rate on cherry lumber will correct the departures from the fourth section on that commodity between the points in question. Those features of the above fourth section applications will therefore be denied.

PAPER AND PAPER ARTICLES.

The petition of Langan Brothers Company involves rates on paper and paper articles from Chicago and points taking the same rates to Des Moines. The petition also attacks the proportional rates from the Mississippi River to Des Moines on shipments originating east of the Indiana-Illinois state line, but that feature of the complaint was not developed on the hearing. Reparation is asked.

Rates on the commodities named in this complaint have been considered in connection with the principal complaint herein, and this complaint may therefore be dismissed. We find of record no basis for an award of reparation.

IRON AND STEEL ARTICLES.

The petitions of the Des Moines Iron Company and Luthe Hardware Company involve the rates on iron and steel articles from Chicago and points taking the same rates to Des Moines. When these petitions were filed the rate on iron and steel articles was 16 cents per 100 pounds. Since that time, however, the rate in question has been considered by the Commission in the proceeding entitled *Rates on Iron and Steel Articles*, 30 I. C. C., 337, and the respondents were therein authorized to establish a rate of 17½ cents, which is the rate in force to-day. These complaints will therefore be dismissed.

BOTTLES.

The complaints filed by the Waterbury Chemical Company and Des Moines Drug Company, respectively, involve commodity rates on bottles in carloads from Chicago, St. Louis, and Alton to Des Moines. The rate on that commodity from Chicago is at present 21½ cents per 100 pounds, or one-half cent in excess of the class rate, and has already been discussed in connection with the proceeding brought by the Greater Des Moines Committee. The rate from St. Louis and Alton is 18½ cents, which the complainants allege is excessive to the extent that it exceeds 15 cents.

Little testimony was adduced of record relating to the reasonableness of this rate from St. Louis and Alton. Bottles, glass jars, etc., are rated fifth class, and the fifth-class rate from St. Louis to Des Moines is 19½ cents, as compared with the commodity rate of 18½ cents. Upon this record we find no necessity for an order requiring the maintenance of lower rates on that commodity from St. Louis and Alton to Des Moines. This complaint will be held open pending the result of the conference heretofore alluded to to be held between the complainants and respondents as to the revision in the rate on bottles from Chicago to Des Moines.

The petition filed by the Waterbury Chemical Company and others against the Chicago, Burlington & Quincy Railroad Company involves class rates between Chicago and Peoria and Des Moines, and also certain commodity rates then in effect between the same points. The complaint against the class rates has since been remedied by the revision in the Chicago class rates following our decision in the *State of Iowa v. C., St. P., M. & O. Ry. Co.*, 28 I. C. C., 76; 29 I. C. C., 539. The commodity rates have been considered in the foregoing pages of this report and nothing further need be added here. This complaint will be dismissed.

LEATHER.

The J. H. Cownie Glove Company, one of the complainants in this proceeding, is located in Des Moines and is engaged in the manufac-

ture, among other things, of gloves. The leather used for this purpose is purchased largely in Chicago, and the rate under which it moves to Des Moines is here brought into controversy. It is stated that the kind of leather used in the grade of gloves manufactured by this company is practically identical with that used in the manufacture of harness, but that under the rating accorded leather in the western classification the former is classified first class and the latter second class. It is also stated that in the territory east of the Mississippi River the same leather, shipped in the same manner, is classified second class, but that because of the complainant's location west of the river he is required to pay charges based on first class. Reference is made to the fact that certain commodity rates are in effect from Chicago to points in the state of Missouri applicable on any leather shipped in bundles or rolls, and that under those rates no distinction is made between leather used for gloves and that used for the manufacture of shoes, harness, or other leather articles.

It is the contention of the carriers that since glove leather embraces a wide range of leathers, many of which are of high value and would be liable to damage if not securely boxed, it is reasonable to place it in a higher rated class when shipped in any other manner. If boxed, the second-class rate applies. The complainant, however, asserts that it is impracticable to ship this leather in boxes, owing to its weight and that therefore the lower rating can not be obtained. He furthermore states that in the 20 years in which he has been in business he has never filed a claim for damage to leather.

A comparison of the ratings on harness leather and leather not otherwise indexed by name, which includes glove leather, as provided in the various classifications in force in different parts of the country, discloses that in none but the western classification does leather similar to that used by this complainant in the manufacture of gloves, when shipped in rolls or bundles, take rates higher than second class. In the absence of any adequate showing to the contrary on the part of the respondents we are of the opinion that the rate from Chicago to Des Moines on the leather in question should not exceed the present second-class rate.

A note substantially in accordance with those in the official and southern classifications, providing for wrapping with burlap or paper, may be inserted in the classification if that protection is deemed by the carriers to be a necessary precaution against damage.

It is unnecessary to consider at length the reasons for the establishment of the commodity rates to certain points in the state of Missouri referred to in the complaint. It appears that leather for the manufacture of shoes is used in large quantities at the state penitentiary in Jefferson City, Mo. The record shows that in order to participate

in the transportation of this commodity from Chicago it was necessary for the carriers to establish a rate which would meet the competition from St. Louis. The Chicago & Alton, which is not a party to this proceeding, in reaching Jefferson City extends through Mexico, Mo., and other points, and the commodity rate applying from Chicago to the former city was made applicable on shipments to the latter. The necessity for a commodity rate to Des Moines lower than second class is not apparent; sufficient relief will be obtained by the reduction to the second-class rate.

In addition to the rate from Chicago this petition also refers to proportional rates on leather between Des Moines and the Mississippi River on shipments originating east of the Indiana-Illinois state line, but this matter was not pressed at the hearing and will not be considered here. The claim for reparation will be denied.

BROOM HANDLES.

The petitions filed by the Harrah & Stewart Manufacturing Company involved the rate in effect in 1912 on broom handles in carload quantities from Chicago to Des Moines. The prayer in each petition is for the establishment of a rate of $24\frac{1}{2}$ cents from Chicago and Chicago rate points to Des Moines on articles rated class A in the western classification. A proportional rate of 7.2 cents from the Mississippi River to Des Moines is also requested; but, as heretofore stated, the matter of proportional rates is not to be considered herein.

Broom handles are rated class A in the western classification, and at the time these complaints were filed the rate from Chicago to Des Moines was $28\frac{1}{2}$ cents per 100 pounds. Since that time, however, the rate has been reduced to 24 cents, and the complaints having thus been satisfied will be dismissed.

Orders will be entered in accordance with the findings expressed herein.

No. 5571.

STATE CORPORATION COMMISSION OF NEW MEXICO

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

No. 5875.

ROSWELL COMMERCIAL CLUB ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

FOURTH SECTION APPLICATION No. 689.

Submitted April 11, 1914. Decided June 14, 1915.

1. Rates on the classes and certain commodities named in the report from Kansas City, Mo., St. Louis, Mo., and Chicago, Ill., to points in New Mexico found to be unreasonable and reasonable rates prescribed for the future.
2. Permission denied under the fourth section of the act to the carriers operating from Kansas City, St. Louis, and Chicago to maintain lower rates to El Paso, Tex., than to intermediate New Mexico points on the classes, and also on commodities, except in the instances defined in the report.
3. Contention that rates from Kansas City, St. Louis, and Chicago to El Paso are unduly depressed by reason of the action of the carriers from those points of origin in equalizing the rates to El Paso to the basis applied to Laredo and Eagle Pass in order that all these Rio Grande crossings may be placed on a parity in their competition with each other for traffic into Mexico, and because also of the competition of the water-and-rail routes from the eastern seaboard and from Europe to consuming markets in Mexico via the Mexican ports of Tampico and Vera Cruz, held not to constitute sufficient grounds for fourth section relief at El Paso. Competition of the water-and-rail routes from the markets of production on the eastern seaboard to El Paso via Galveston and other Gulf ports held to constitute a sufficient basis for fourth section relief in connection with commodity rates from Kansas City, St. Louis, and Chicago to El Paso in those cases in which the El Paso rates are thereby actually affected and depressed below a reasonable basis.
4. Reasonable maximum rates prescribed on hay from Roswell and other points in the Pecos Valley of New Mexico to Fort Worth, Tex., and points taking the same rates, and on lumber from mills in Texas, Louisiana, and Arkansas to points in the Pecos Valley.

5. Relation to the rates to Tucumcari, N. Mex., prescribed on sugar from California points, including San Francisco and Los Angeles, to points in New Mexico on the Atchison, Topeka & Santa Fe Railway from Vaughn to Clovis, inclusive.

F. W. Clancy, S. H. Cowan, H. H. Williams, O. L. Owen, and M. S. Groves for complainants.

R. B. Daniel for Carlsbad Commercial Club, Pecos Water Users' Association, Pecos Commercial Club, and Artesia Chamber of Commerce, interveners.

F. A. Jones for Arizona Corporation Commission, intervener.

E. P. Gregson for Associated Jobbers of Los Angeles, Cal., interveners.

Gardiner Lathrop, S. T. Bledsoe, T. J. Norton, W. C. Reid, and J. L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

F. H. Wood and F. M. Hartman for Southern Pacific Company.

W. F. Dickinson, Wallace T. Hughes, A. N. Brown, W. C. Barnes, and Hawkins & Franklin for El Paso & Southwestern Company and Chicago, Rock Island & Pacific Railway Company.

E. W. Dobson for New Mexico Central Railroad Company and receiver thereof.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complaint in No. 5571, brought, as the title indicates, by the State Corporation Commission of New Mexico, attacks as unreasonable and unduly prejudicial the class and commodity rates into New Mexico. The points of origin involved are Kansas City, Mo., and all points on and east of the Missouri River, including St. Louis, Mo., Chicago, Ill., and the great lakes region to, but not including, eastern seaboard territory. California and North Pacific coast points of origin are also included as to certain commodities. The allegations are that the rates attacked violate sections 1, 3, and 4 of the act. The complaint is based largely upon violations of section 4. The applications of the defendant carriers for relief from the provisions of the fourth section were not assigned for hearing with the complaint, but the carriers have stated of record that their full defense under the fourth section has been given in this case and that a separate hearing under the fourth section is waived.

After the complaint in No. 5571 was filed the Roswell Commercial Club, of Roswell, N. Mex., and similar commercial organizations of Portales, Dexter, and Hagerman, N. Mex., filed the complaint in No. 5875, attacking as unreasonable and unduly prejudicial the class and commodity rates from practically all points of origin to the points named, which are all situated on what is known as the Pecos

Valley branch of the Atchison, Topeka & Santa Fe Railway, hereinafter referred to as the Santa Fe, which leaves the main line of that carrier at Clovis, N. Mex., 104 miles west of Amarillo, Tex., and extends thence south across the southern boundary of New Mexico to Pecos, Tex.

The complaint brought by the corporation commission covers rates to all points in New Mexico, including those on the Pecos Valley branch of the Santa Fe. The complainants in No. 5875 support the allegations of the corporation commission's complaint, and by their separate petition merely bring more directly in issue the Pecos Valley situation.

At the hearing petitions of intervention were filed by commercial organizations of Carlsbad and Artesia, N. Mex.; Pecos, Tex.; Los Angeles, Cal.; and by the Arizona Corporation Commission. Carlsbad, Artesia, and Pecos are also situated on the Pecos Valley branch of the Santa Fe.

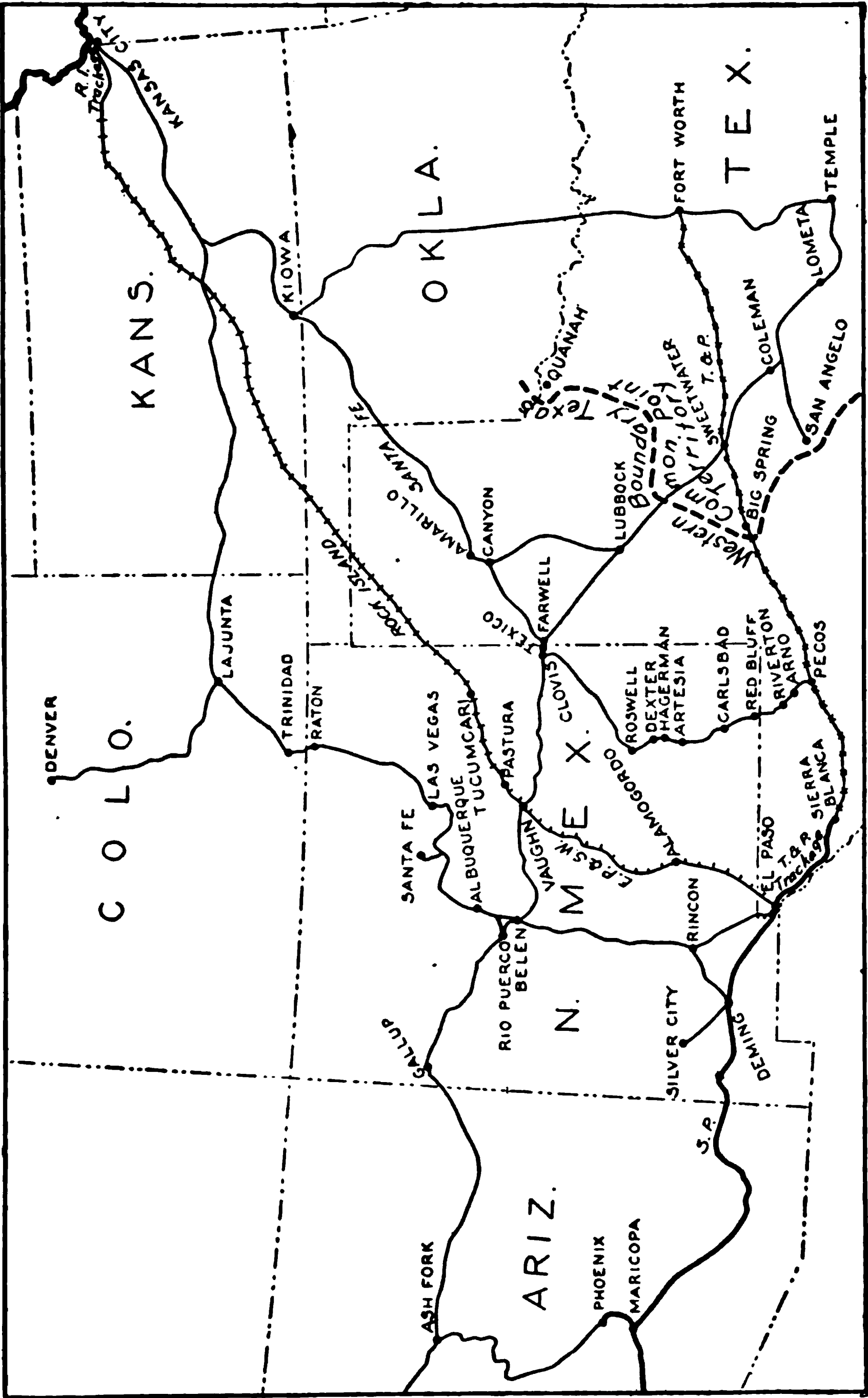
During the interim since the submission of these cases the Commission has had under consideration the more or less related adjustments of rates involved in *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611; 34 I. C. C., 13, certain features of which have only recently been disposed of, and on that account has thought it advisable to defer the determination of the questions here presented.

The map here reproduced will indicate the routes of the lines to and through New Mexico and the location of representative points of destination thereon, to which we shall later refer.

It will be seen that the principal lines serving the state are those of the Santa Fe and the Chicago, Rock Island & Pacific Railway, hereinafter referred to as the Rock Island, and that in the number of points served the Santa Fe is the principal defendant.

We shall consider first the complaint brought by the corporation commission.

We have already stated that the paramount issue in this case arises under the fourth section of the act. The principal violation of that section arises from the fact that rates from Kansas City, St. Louis, and Chicago are lower to El Paso, Tex., than to New Mexico points directly intermediate. The following table will illustrate this situation with respect to the representative intermediate points shown on the accompanying map. For the sake of convenience, we shall include in this table a statement of the rates to other representative New Mexico points not directly intermediate to El Paso, but the rates to which are alleged to be unlawful under sections 1 and 3 of the act. We shall also include a statement of the rates to Colorado common points, Utah common points, Texas common points, Amarillo, Tex.,



and Phoenix, Ariz., to all of which we shall refer more in detail later in the report. Rates are stated in cents per 100 pounds:

From—	To—	1	2	3	4	5	A	B	C	D	E
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cts.</i>
Kansas City.....	Raton.....	135	110	91	75	52	63	47	42	33	24
St. Louis.....	do.....	182	145	118	95	68	81	61	55	47	41
Chicago.....	do.....	200	163	127	100	72	87	68	59	52	45
Kansas City.....	Las Vegas.....	170	150	135	120	95	100	85	65	55	48
St. Louis.....	do.....	212	190	170	147	115	124	101	81	68	54
Chicago.....	do.....	232	210	180	152	119	131	108	85	73	58
Kansas City.....	Albuquerque, Santa Fe, and Belen.	170	150	135	120	95	100	85	65	55	48
St. Louis.....	do.....	212	190	170	147	117	124	104	82	68	56
Chicago.....	do.....	232	210	180	152	122	131	111	87	73	64
Kansas City.....	Gallup.....	250	217	183	158	133	133	104	83	79	71
St. Louis.....	do.....	279	242	203	171	143	146	114	91	85	78
Chicago.....	do.....	290	251	209	175	147	150	118	94	89	80
Kansas City.....	Rincon.....	170	150	135	120	95	100	85	65	55	48
St. Louis.....	do.....	201	181	162	147	114	117	101	82	68	59
Chicago.....	do.....	216	197	174	152	121	126	109	87	73	64
Kansas City.....	Deming.....	200	179	160	143	115	119	103	83	70	62
St. Louis.....	do.....	213	184	162	151	116	119	108	84	70	62
Chicago.....	do.....	225	199	174	161	123	128	111	91	76	68
Kansas City.....	Silver City.....	210	189	167	148	120	127	113	92	77	68
St. Louis.....	do.....	220	197	179	166	128	132	113	92	77	69
Chicago.....	do.....	240	213	191	176	135	141	121	99	83	74
Kansas City.....	Lordsburg.....	234	209	183	158	123	133	104	83	77	70
St. Louis.....	do.....	240	210	188	171	136	139	111	91	77	70
Chicago.....	do.....	250	227	200	175	143	148	118	94	83	75
Kansas City.....	Vaughn.....	161	143	128	115	90	94	82	65	53	46
St. Louis.....	do.....	195	169	147	134	105	110	94	78	62	54
Chicago.....	do.....	215	189	157	139	110	117	101	83	67	59
Kansas City.....	Tucumcari.....	149	130	110	95	70	72	65	55	44	39
St. Louis.....	do.....	173	146	131	111	85	93	80	68	55	49
Chicago.....	do.....	193	164	141	116	90	100	87	73	60	54
Kansas City.....	Alamogordo.....	161	143	128	115	90	94	82	65	53	46
St. Louis.....	do.....	195	169	147	134	105	110	94	78	62	54
Chicago.....	do.....	215	189	157	139	110	117	101	83	67	59
Kansas City.....	Clovis.....	150	130	115	100	81	84	76	59	48	41
St. Louis.....	do.....	182	160	137	124	98	103	89	75	60	52
Chicago.....	do.....	202	180	147	129	103	110	95	80	65	57
Kansas City.....	Roswell.....	152	137	121	110	87	89	79	65	51	44
St. Louis.....	do.....	182	160	137	124	98	103	89	75	60	52
Chicago.....	do.....	202	180	147	129	103	110	95	80	65	57
Kansas City.....	Carlsbad.....	152	137	121	110	87	89	79	65	51	44
St. Louis.....	do.....	182	160	137	124	98	103	89	75	60	52
Chicago.....	do.....	202	180	147	129	103	110	95	80	65	57
Kansas City.....	El Paso.....	159	138	122	116	86	89	81	63	51	44
St. Louis.....	do.....	159	138	122	116	86	89	81	63	51	44
Chicago.....	do.....	179	154	124	126	98	98	89	79	57	49
Kansas City.....	Texas common points.	147	125	104	95	75	79	70	58	46	39
St. Louis.....	do.....	147	125	104	95	75	79	70	58	46	39
Chicago.....	do.....	167	141	116	106	82	88	78	65	52	44
Kansas City.....	Amarillo.....	127	111	95	89	70	72	65	53	41	34
St. Louis.....	do.....	157	134	112	103	81	85	75	62	50	43
Chicago.....	do.....	177	150	124	113	88	95	83	70	56	48
Kansas City.....	Colorado common points.	115	92	74	60	47	55	42	37	33	29
St. Louis.....	do.....	162	137	101	80½	63	74	56	50	42	36
Chicago.....	do.....	180	145	110	85	67	80½	63	54	47	40
Kansas City.....	Phoenix, Ariz.....	250	217	183	158	133	133	104	83	79	71
St. Louis.....	do.....	280	242	203	171	143	146	114	91	85	78
Chicago.....	do.....	290	251	209	175	147	150	118	94	89	80
Kansas City.....	Utah common points.	200	170	150	126	100	105	80	70	50	42
St. Louis.....	do.....	247	205	175	143	116	120½	94	81	59	49
Chicago.....	do.....	265	223	185	149	121	128	101½	85	64	54

The defendants advance as justification for maintaining lower rates to El Paso than to New Mexico points directly intermediate several grounds:

(1) El Paso is on the north bank of the Rio Grande River, which marks the boundary line between the United States and Mexico, and

in the sale of goods in Mexico its jobbers come in competition with jobbers at certain of the other Rio Grande crossings, namely, Eagle Pass, Tex., 520 miles east of El Paso, and Laredo, Tex., 227 miles east of Eagle Pass. Laredo is the nearest of the Rio Grande crossings to the Texas common-point territory and the nearest also to St. Louis, which is the principal basing point for rates to Texas from points north of the Ohio and Potomac rivers. The Texas common-point territory and the adjustment of rates peculiar thereto have been described in other cases and need not be repeated in detail here. It will be sufficient to say in that connection that the common-point territory embraces all that part of Texas situated east of a line drawn from Quanah in the northwestern part of the state, in a southerly and southeasterly direction through Big Springs, San Angelo, Devine, and Corpus Christi, and that rates are blanketed over this area on traffic originating in the defined territories, which include, generally speaking, all points north of the Ohio and Potomac rivers and between the Mississippi River and the Buffalo-Pittsburgh line. As a general proposition the same rates apply from Kansas City as from St. Louis to the common points. To El Paso and the other Rio Grande crossings named rates from the defined territories are made by adding the differentials—

Class.....	1	2	3	4	5	A	B	O	D	E
Cents.....	12	18	18	20	11	10	11	5	5	5

to the common-point rates. These differentials are the same to all the crossings because of the desire of the lines from St. Louis to place all the crossings on an equality in their competition with each other in Mexico, and Laredo, being the nearest crossing to the common-point territory and to St. Louis, fixes the rates to all the crossings, thereby giving to El Paso a lower basis of rates from St. Louis than otherwise it would be entitled to. An influence in this equalization has been the action of the Mexican carriers in equalizing the rates southbound from the Rio Grande to important cities in northern Mexico, such as Torreon.

The Texas common-point rates, on which the El Paso rates are based, are said by the defendants to be unduly low on account of competitive conditions.

(2) It is alleged that rates from the defined territories to El Paso are affected by competition of the water-and-rail routes from the eastern seaboard to El Paso via the Mexican ports of Tampico and Vera Cruz. The witness for the defendants who testified on this phase of the case was unable to state that shipments had actually been made to El Paso via these routes, but did say that traffic had moved via these ports to cities in northern Mexico reached also by jobbers at El Paso with traffic received from the defined territories.

Traffic is also said to move to these northern Mexico cities via Tampico and Vera Cruz from European countries at rates the same as apply via those ports from New York.

(3) Another influence affecting the rates from the defined territories to El Paso is the competition of the water-and-rail routes from the east via New Orleans, Galveston, and Texas City. The rates from New Orleans to El Paso are usually the same as from Galveston and are controlled by the rates from Galveston. The Galveston rates in turn are those prescribed by the Texas commission. It appears that a considerable proportion of the traffic from the eastern seaboard is consigned to the Gulf ports and reshipped thence to El Paso. The water-and-rail carriers also unite in the publication of joint through rates from the east to El Paso. The following table shows with respect to class traffic the water-line rates per 100 pounds from New York to Galveston, the rates prescribed by the Texas commission from Galveston to El Paso, the resulting combination, the joint through rates via the same routes, and the all-rail rates from Kansas City, St. Louis, and Chicago.

	1	2	3	4	5	A	B	C	D	E
	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Cts.</i>
New York to Galveston.....	75	63	55	48	32	36	32	27	26	26
Galveston to El Paso.....	112	101	86	81	61	64	56	48	36	29
Galveston combination.....	187	164	141	129	93	100	88	75	62	55
Joint water-and-rail rate, New York to El Paso.....	184	158	138	129	95	101	91	72	60	54
Kansas City-St. Louis to El Paso.....	159	138	122	116	86	89	81	63	51	44
Chicago to El Paso.....	179	154	134	126	93	98	89	70	57	49

From this table it will be seen that on six of the classes joint through rates are published from New York lower than the combination on Galveston, and that that combination is higher than the rates from Kansas City and St. Louis on all the classes and higher than the rates from Chicago on all but two of the classes.

Upon the same exhibit filed by the defendants, from which the foregoing figures were taken, appears a similar comparison of the rates on 52 articles of traffic that move on commodity rates. On 8 of these commodities joint through rates are published which are lower than the Galveston combination. That combination with respect to 26 commodities is higher than the rates from St. Louis and with respect to 8 higher than the rate from Chicago.

A similar comparison shows the water-and-rail rates from the east via the Texas Steamship Company and connections, via Texas City, Tex. The rates on the first four classes from New York to Texas City via this steamship line are 5, 4, 3, and 2 cents, respectively, lower than the Morgan line's rates from New York to Galveston.

On the other classes the rates are the same to their respective ports via both lines. The class rates from Texas City to El Paso are the same as those from Galveston to El Paso. There are rates on 74 commodities shown on this exhibit, and as to 31 of them the water-and-rail combination is higher than the rate from St. Louis and as to 10 higher than the rate from Chicago.

The water-and-rail rates to El Paso are also shown in connection with the line of the Seaboard & Gulf Steamship Company and rail connections from Port Aransas, Tex. The rates of this steamer line from New York to Port Aransas are lower than those applicable via the other lines to Galveston and Texas City, except that on classes C, D, and E the rates to the respective Gulf ports served by all three lines are the same.

In addition to the foregoing competition which they state they are required to meet, the defendants suggest that inasmuch as the rates of these water lines are not required to be filed with the Commission they may be departed from at will. The defendants further suggest that rates from the defined territories to El Paso are influenced by the rates made by tramp steamers.

The complainant denies that competitive influences have operated to depress the rates from the defined territories to El Paso below a reasonable and normal level, and contends that such competition as has influenced the rates to El Paso has been only of a kind and operative to such an extent as to bring the El Paso rates to a basis that is both reasonable and normal. The complainant charges that the main influence affecting the El Paso rates has been the concert of action of all the El Paso lines in fixing those rates through the medium of their joint agency, the Southwestern Tariff Committee, which publishes rates for all lines from the defined territories to El Paso and other points in the southwest.

We have passed upon the propriety of the carriers maintaining lower rates to El Paso than to intermediate points in certain other cases and have permitted them to do so. In *Pecos Merc. Co. v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 173, decided in 1908, was involved the lawfulness of the carriers maintaining lower rates to El Paso than to Pecos, Tex., and in that case we said:

It is further contended in behalf of defendants that transportation of freight to El Paso is not made under substantially similar circumstances and conditions as to Pecos; that El Paso is reached by four railroads which are competitors for business from points of origin named; that to three Mexican gateways—Laredo, Eagle Pass, and El Paso—rates have been and must be maintained at the same figure; that Laredo, which is 300 miles nearer Chicago than El Paso, fixes the rates to the Mexican border, which are very low; that water rates from St. Louis to New Orleans and the Gulf of Mexico and Mexican ports, and rates to and through the port of Galveston influence rates to El Paso and the

other Rio Grande crossings; and that rates to wholesale dealers in El Paso must be maintained at a low average to enable them to compete for Mexican business with jobbers located at the other gateways.

There can be no doubt that competitive conditions exist at El Paso that do not exist at Pecos. Circumstances and conditions with respect to transportation at the former are not the same as at the latter place.

In *Moise Bros. Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C., 550, decided in 1909, the El Paso rate was lower than to Santa Rosa, N. Mex., and we there said:

The lower rates made by the defendant lines in conjunction with the El Paso & Southwestern Railway for the longer haul to El Paso than are made by the defendants alone for their shorter haul to Santa Rosa are the result of competitive conditions at El Paso that have already been considered by the Commission. El Paso is on the Rio Grande and is one of the important gateways through which passes the great volume of traffic between this country and the Republic of Mexico. It is reached by four extensive railway systems, including the Rock Island in connection with the El Paso & Southwestern; and their rates to El Paso are controlled more or less effectually by the rates upon which traffic may reach the consuming markets of Mexico through its own ports. There is also a substantial movement of traffic to El Paso through Galveston and New Orleans. All this has been fully explained in *Pecos Mercantile Co. v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 173, 177, and further explanation here seems unnecessary.

These cases were decided before the amendment of 1910 to the fourth section. Whatever has been the effect of that amendment upon the substantial requirements of that section or upon our discretion in fourth section cases, and whatever also may have been the facts of record upon which the cases were decided, we are not convinced from the facts of the record now before us that, except in the instances to which we shall presently refer, the defendants should be granted fourth section relief.

We have already stated that no traffic is shown by this record to move from the eastern seaboard to El Paso via Tampico and Vera Cruz, and even conceding the movement of traffic in substantial volume from the east or from Europe via those ports to cities in northern Mexico reached also by the El Paso jobber, we would not be justified on that account in granting the fourth section relief desired. In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153-279, concerning competition between carriers serving markets of distribution as a basis for fourth section relief, we said:

The situation at Columbus, Ga., differs in some degree from the situations at Augusta and Macon. There is a regular all-water service on the Chattahoochee and Apalachicola rivers between Columbus and Apalachicola, and some freight moves by water from New Orleans to Columbus. The present level of rates to Columbus, however, can not be very well said to be due to water competition for the reason that we find that when the rates to Atlanta were reduced in 1905 the rates to Columbus were correspondingly reduced. The testimony is

clear that this reduction was not brought about by increased water competition, but by entirely different conditions. The two forceful reasons that induced the reductions at Columbus were the competition of markets of distribution and the competition of carriers serving other markets of supply. We have held that the competition between markets of distribution does not constitute a justification for the maintenance of lower rates to a more distant than to an intermediate point. The competition of carriers serving other markets of supply does constitute, in our opinion, a justification in some instances for making lower rates to more distant than to intermediate points, when it is found—

First, that the route from one market is under a material disadvantage as against that from another.

Second, that the line seeking relief is meeting consistently at all points the competition against which relief is sought.

Nor do we perceive any reason why the carriers' equalization of the Rio Grande crossings should afford a valid basis for fourth section relief in connection with the El Paso local rates. The carriers' necessities in meeting this situation could be as well met by the publication of proportional rates to El Paso or joint through rates to Mexico, and we understand that such rates have, as a matter of fact, been effective in the past and that the proportional rates are still in effect.

Considering all the facts disclosed of record we are not convinced that the situation in connection with this traffic into Mexico is such as to warrant the fourth section relief prayed.

In our view the only valid basis for such fourth section relief, if any, as the carriers serving El Paso may be entitled to would be that afforded by the fact of actual competition of the water-and-rail routes from the eastern seaboard to El Paso via Galveston and the other Gulf ports named. Many, if not all, of the commodities purchased by the El Paso jobber or consumer at Kansas City, St. Louis, and Chicago can be likewise purchased at New York and other points on the Atlantic seaboard from which the water-and-rail routes are available. This situation presents competition between carriers serving markets of production, which kind of competition, we held in the fourth section case cited, may properly be a valid basis for fourth section relief.

We have shown by the foregoing table that in nearly all cases the class rates from the Atlantic seaboard to El Paso are higher than from Kansas City, St. Louis, and Chicago. No competitive necessity would therefore seem to demand fourth section relief at El Paso in connection with the class rates, and as to the class rates relief will be denied. We have also shown that on many commodities the water-and-rail rates from the eastern seaboard to El Paso are higher than the defendants' rates from Kansas City, St. Louis, and Chicago. We think that as to commodities relief should be granted when

actually necessitated by the water-and-rail competition, provided thereby the El Paso rates are forced down below what would ordinarily seem to be a reasonable basis. In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, we authorized the carriers operating west from the Missouri River, in those cases in which they were compelled by the competition of the water lines from the eastern seaboard to maintain a rate to the Pacific coast of less than 75 cents per 100 pounds, to continue higher rates to intermediate points, provided the intermediate rate in no case exceeded 75 cents. This 75-cent maximum yields about 8 mills per ton-mile for the longest hauls involved. The articles of traffic involved in that case were in large part those which move in heavy carloads and in considerable volume. The list of commodities here under consideration is more varied and includes commodities usually moving under a lower carload minimum. The distances in the present case are also less. We think the maximum rate below which relief should be granted, and which will in cases in which relief is granted be the maximum rate from Kansas City and St. Louis to intermediate points, should be 65 cents per 100 pounds. This rate will yield 11.1 mills per ton-mile from Kansas City and 9.4 mills from St. Louis for the maximum hauls.

Our finding therefore is that as to those commodities on which the lowest available rates from the Atlantic seaboard to El Paso are 65 cents or more no relief under the fourth section will be granted to the carriers operating from Kansas City and St. Louis to El Paso. As to those commodities on which the lowest available rates from the eastern seaboard to El Paso are less than 65 cents the carriers operating routes from Kansas City and St. Louis to El Paso will be authorized to meet those rates provided the intermediate rates do not exceed 65 cents. In those instances in which the lowest available rates from the eastern seaboard to El Paso are less than 65 cents and the petitioners desire to maintain even lower rates from Kansas City and St. Louis to El Paso than apply from the eastern seaboard they may do so provided the intermediate rates do not exceed the contemporaneous rates to El Paso by more than the difference between the rates from New York to El Paso and 65 cents; the net result of this last finding being that by whatever amount the carriers voluntarily reduce the El Paso rates below what is required by the water-and-rail competition they must likewise reduce the intermediate rates below 65 cents. This will be explained more in detail later in the report, in connection with our discussion of the Kansas City to Albuquerque commodity rates.

In all cases where relief is denied under the fourth section the carriers may correct the undue discrimination existing against inter-

mediate points by increasing the rate to the more distant point; by decreasing the rates to the intermediate points; or by simultaneous increases and reductions.

The complainants have put in issue here the reasonableness under section 1 of the rates to intermediate points, and the proper disposal of this case makes it necessary for us to respond to this feature of the complaint and the testimony offered relative thereto. We shall, therefore, establish such reasonable rates to the intermediate points as the facts here shown appear to warrant, and should the carriers, in compliance with our fourth section order, see fit to make any increases in the rates to El Paso, the tariffs containing such rates will, of course, be subject to protest and suspension. In the consideration of such protests, however, due weight will be given to the findings herein made as to the rates found reasonable at the intermediate points.

Before proceeding to a consideration of all the rates to New Mexico points, including those to Roswell and other points on the Pecos Valley branch of the Santa Fe, it will be necessary to refer somewhat in detail to the complaint filed by the Roswell Commercial Club and other Pecos Valley complainants in No. 5875, which, as stated, is brought principally under sections 1 and 3 of the act, and brings more particularly to view a situation peculiar to the Pecos Valley.

In 1907, in *Roswell Commercial Club v. A., T. & S. F. Ry. Co.*, 12 I. C. C., 339, we had under review the rates to the Pecos Valley. In addition to specific findings with respect to the rates on certain commodities we prescribed maximum class rates from Kansas City, St. Louis, Galveston, and Denver which we constructed by adding the differentials—

Class.....	1	2	3	4	5	A	B	C	D	E
Cents.....	35	30	25	21	17	17	14	12	10	10

to the rates then applicable from the same points to Amarillo. On the same date on which that case was decided we announced our opinion in *Nobles Bros. Gro. Co. v. F. W. & D. C. Ry. Co.*, 12 I. C. C., 242, in which we denied Amarillo's prayer for the Texas common-point basis of rates, but granted Amarillo, from Kansas City, the same rates as applied to what is known as the Burnt district of Texas, which embraces a section of the northwestern part of the common-point territory and to which, by reason of the fact that from Kansas City the average distance is less than the average distance to the common points, the rates from Kansas City are less than to the common points. It thus appears that as to traffic from Kansas City the class rates to Amarillo, on which were based the

Pecos Valley class rates prescribed by us in the *Roswell case*, were lower than to Texas common points.

In the *Roswell case* we did not establish a fixed relationship between the Amarillo and Pecos Valley rates, but directed merely the establishment of joint rates with relation to the then existing Amarillo rates. In other words, our findings did not in terms require that with every revision of the Amarillo rates a corresponding change should be made in the Roswell rates. Since the decision in the *Roswell case* changes have been made in the Amarillo rates that were not carried to the Pecos Valley. In 1908 the Texas common-point rates on classes and commodities were increased, and as the Amarillo rates are made differentially over the common-point rates those increases affected Amarillo. In 1911 in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, we sustained these increased rates on the first and second classes and on commodities, but condemned them on the other classes. No corresponding increases were made in the Pecos Valley rates. In 1913 the *Texas Common Point case*, 26 I. C. C., 528, was decided. As a result of that decision Amarillo secured Texas common-point rates on many commodities from Kansas City and points east in the defined territories. These reductions were not carried to the Pecos Valley. It therefore appears that there is to-day no real relationship between the Amarillo and Pecos Valley rates. The Pecos Valley complainants in No. 5875 are asking that their rates be made by adding to the Amarillo rates the differentials now applied to El Paso over Texas common points.

We do not feel that we should in passing upon the Pecos Valley rates be guided exclusively or primarily by the rates to Amarillo. The complaint filed by the corporation commission attacks the rates to all points in the state, including those in the Pecos Valley, and we should review the Pecos Valley rates as a part of the entire state adjustment which is before us upon the two complaints. The Pecos Valley rates should bear a reasonable relation not only to the rates to Amarillo, but also to the rates to other points in New Mexico, and all the New Mexico rates as a whole should bear a reasonable relation to the rates to other points in the west and southwest, prescribed by us, including Colorado common points, Utah common points, Texas common points, Amarillo, Tex., and Phoenix, Ariz.

In approaching this general revision we are not confronted with the existence of any established basis or fixed relation in the rates to New Mexico. The present rates from Kansas City, St. Louis, and Chicago are not made upon any established basis or with any fixed relation to each other.

Considering all the facts of record, we find that the present class rates from Kansas City are unreasonable to the extent they exceed those shown in the following table:

	1	2	3	4	5	A	B	C	D	E
	Cts. 155	Cts. 132	Cts. 109	Cts. 93	Cts. 78	Cts. 81	Cts. 62	Cts. 54	Cts. 46	Cts. 39
Tucumcari, Clovis.....										
Roswell, Carlsbad, Vaughn, Pastura, Alamogordo, Las Vegas, Albuquerque, Santa Fe, Belen, Rincon.....	170	145	119	102	85	88	68	60	51	43
Deming.....	200	170	140	120	100	104	80	70	60	50
Silver City.....	210	179	147	126	105	109	84	74	63	53
Gallup, Lordsburg.....	225	191	158	135	113	118	90	79	68	56

We do not find the class rates to Raton to be unreasonable or otherwise unlawful.

We further conclude that class rates from St. Louis and Chicago should be made by adding established differentials to the contemporaneous rates from Kansas City. The maximum St. Louis differentials will be—

Class	1	2	3	4	5	A	B	C	D	E
Cents	30	25	21	18	15	16	12	10	9	8

and the maximum Chicago differentials—

Class	1	2	3	4	5	A	B	C	D	E
Cents	50	42	35	30	25	26	20	18	15	13

We find that the present class rates from St. Louis and Chicago to the points named are unreasonable to the extent that they exceed what they would be if so constructed.

The carriers will be expected to observe the fourth section in connection with their rates to intermediate points. No order will be made with respect to rates to many points not directly intermediate to El Paso, but the carriers will be expected to readjust their rates to such points in fair relation to those herein prescribed.

We are asked to prescribe maximum commodity rates to New Mexico. Reference was made in the petition and at the hearing to the rates on numerous commodities. The exhibits filed by the corporation commission referred definitely to the rates on 11, which we take it may be regarded as representing the principal commodities moving into the state. They are agricultural implements, beer, canned goods, emigrant movables, furniture, packing-house products, building and roofing paper, cast-iron and wrought-iron pipe, stoves, sugar and sirup, and wire and nails. We feel that we should not attempt upon this record a revision of the rates on commodities other than these, except on lumber and alfalfa hay from the Pecos Valley, which were given special consideration at the hearing. The present rates on the commodities named, to the representative points referred

to in connection with the class rates, are as follows, in cents per 100 pounds:

		products.									
		Paper, building and roofing.					Pipe, cast and wrought iron.		Stoves.		Sugar and syrup.
											Wire and nails.
		Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Kansas City.....	Raton.....	67	35	55	42	97	55	49	40	52	55
St. Louis.....	do.....	89	52	68	50	118	68	60	50	68	68
Chicago.....	do.....	97	57	72	55	127	72	66	55	72	72
Kansas City.....	Las Vegas.....	88	60	65	55	125	80	75	67	80	64
St. Louis.....	do.....	95	75	81	68	152½	95	85	72	94	81
Chicago.....	do.....	102	80	86	73	160	100	90	77	99	86
Kansas City.....	Albuquerque.....	91	60	70	55	135	85	80	72	86	64
St. Louis.....	do.....	100	75	85	68	152½	101	90	74	94	81
Chicago.....	do.....	107	80	91	73	160	105	95	79	98	86
Kansas City.....	Santa Fe.....	91	60	70	55	135	85	80	72	89	64
St. Louis.....	do.....	100	75	85	68	152½	101	90	74	94	81
Chicago.....	do.....	107	80	91	73	160	105	95	79	98	86
Kansas City.....	Belen.....	91	60	70	55	135	85	80	72	88	64
St. Louis.....	do.....	100	75	85	68	152½	101	90	74	94	81
Chicago.....	do.....	107	80	91	73	160	105	95	79	98	86
Kansas City.....	Rincon.....	91	70	70	55	121	85	90	72	95	65
St. Louis.....	do.....	100	84	83	68	133	97	91	74	114	81
Chicago.....	do.....	107	91	91	73	142	104	98	79	121	88
Kansas City.....	Deming.....	102	83	89	72	140	103	87	69	115	75
St. Louis.....	do.....	100	89	94	73	162	103	93	74	126	80
Chicago.....	do.....	118	95	101	79	174	110	97	79	128	80
Kansas City.....	Silver City.....	107	95	94	85	149	100	109	74	126	83
St. Louis.....	do.....	114	95	99	85	140	112	109	74	126	83
Chicago.....	do.....	123	102	108	87	149	120	116	79	135	100
Kansas City.....	Lordsburg.....	122	103	103	81	183	121	87	78	130	75
St. Louis.....	do.....	129	108	112	81	183	121	97	85	135	80
Chicago.....	do.....	138	115	118	87	200	129	97	87	139	80
Kansas City.....	Gallup.....	128	125	110	100	183	140	.....	.....	130	75
St. Louis.....	do.....	134	125	116	115	203	165	.....	.....	139	80
Chicago.....	do.....	134	125	118	120	200	165	.....	.....	139	80
Kansas City.....	Vaughn.....	85	65	65	45	97	81	75	63	89	64
St. Louis.....	do.....	95	75	75	59	117	95	85	67	94	78
Chicago.....	do.....	102	80	81	64	124	101	90	72	99	81
Kansas City.....	Clovis.....	84	63	65	45	84	72	75	62	81	60
St. Louis.....	do.....	95	67	72½	59	108	94½	85	67	94	67½
Chicago.....	do.....	102	72	77½	64	115	92	90	72	99	72½
Kansas City.....	Tucumcari.....	72	50	60	44	97	60	70	45	70	60
St. Louis.....	do.....	91	65	75	57	117	75	82	51	87	70
Chicago.....	do.....	99	70	81	62	124	80	85	55	92	75
Kansas City.....	Alamogordo.....	85	65	65	45	97	81	75	62	89	65
St. Louis.....	do.....	95	75	75	59	117	95	85	67	94	78
Chicago.....	do.....	102	80	81	64	124	101	90	72	99	81
Kansas City.....	Roswell.....	85	63	65	45	97	81	75	62	87	60
St. Louis.....	do.....	95	67	72½	59	117	95	85	67	94	67½
Chicago.....	do.....	102	72	77½	64	124	101	90	72	99	72½
Kansas City.....	Carlsbad.....	85	63	65	45	97	81	75	62	87	60
St. Louis.....	do.....	95	67	72½	59	117	95	85	67	94	67½
Chicago.....	do.....	102	72	77½	64	124	101	90	72	99	72½
Kansas City.....	El Paso.....	79	53	57	51	95	71	62	45	89	55
St. Louis.....	do.....	84	54	62	51	95	71	63	51	89	62
Chicago.....	do.....	95	65	69	57	104	75	70	56	98	67

We shall refer first to the commodity rates from Kansas City.

The Raton rates we do not find to be unreasonable or otherwise unlawful.

The Albuquerque rates, we think, need some revision, and in connection with those rates we shall explain more in detail our findings as to commodities under the fourth section.

We said in referring to commodities that fourth section relief would be granted only in cases in which the lowest available rate from the Atlantic seaboard to El Paso was low enough to actually

affect the rates from Kansas City and St. Louis, and in addition was low enough to depress the rates from the above-named points to below a reasonable basis. That dividing line we placed at 65 cents per 100 pounds. From the exhibits showing the water-and-rail rates from the eastern seaboard already referred to, it appears that of the commodities enumerated above the lowest available water-and-rail rate on agricultural implements is 86 cents; on beer, 60 cents; canned goods, 59 cents; cast-iron and wrought-iron pipe, 55 cents; sugar, 65 cents; and wire and nails, 54 cents. We are not advised of the water-and-rail rates on the other commodities. As to agricultural implements our finding is, first, that as the water-and-rail rate is in excess of 65 cents no fourth section relief will be granted and that the rate from Kansas City and St. Louis to Albuquerque should not exceed the rate to El Paso; second, that the 91-cent rate now in effect from Kansas City to Albuquerque is unreasonable and should not exceed 80 cents, which will be the maximum rate both to Albuquerque and El Paso.

On beer, on which the water-and-rail rate from New York is 60 cents, fourth section relief will be granted to the extent necessary to meet the water-and-rail rate, but not further. In the case of beer the carriers from Kansas City and St. Louis have more than met this competition by the publication of a rate of 53 cents from Kansas City and 58 cents from St. Louis, or 7 and 2 cents, respectively, less than the water-and-rail rate. We stated earlier in the report that in those instances in which the lowest available rates from the eastern seaboard to El Paso were less than 65 cents and the carriers from the defined territories published even lower rates than applied via the water-and-rail routes, the intermediate rates should not exceed the El Paso rate by more than the difference between the New York to El Paso rate and 65 cents. Applying that finding here, if the carriers from Kansas City and St. Louis desire to continue the maintenance to El Paso of their present rates of 53 and 58 cents, which are 7 and 2 cents less than they are required to establish by reason of any water-and-rail competition, they must likewise extend the benefit of this additional voluntary reduction of 7 and 2 cents to the traffic of Albuquerque and apply at Albuquerque a maximum rate of 7 and 2 cents under 65 cents, or 58 cents from Kansas City and 63 cents from St. Louis. Should the El Paso rate be increased to the water-and-rail basis of 60 cents, the maximum rate at Albuquerque may be 65 cents.

The rate on canned goods from Kansas City to Albuquerque is 70 cents and to El Paso 57 cents. The water-and-rail rate to El Paso is 59 cents. We think a reasonable rate on canned goods will be secured

by observance of the fourth section findings herein announced. Under those findings if the carriers from Kansas City continue the maintenance to El Paso of a rate 2 cents lower than is required by the 59-cent water-and-rail rate they must make the same 2-cent voluntary reduction from the 65-cent maximum at Albuquerque and make the maximum Albuquerque rate 63 cents. If the El Paso rate should be increased to the water-and-rail basis of 59 cents, the maximum Albuquerque rate may be 65 cents.

The rate on emigrant movables from Kansas City to Albuquerque is 55 cents and to El Paso 51 cents. We are not advised of the water-and-rail rate to El Paso. We think the reasonable maximum rate to Albuquerque would be the present rate of 55 cents.

The rate on furniture to Albuquerque is \$1.35 per 100 pounds. This is the third-class rate, applicable on furniture not otherwise specified. Furniture takes a wide range of class rates, and we can deal upon the record in this case only with such furniture as is included under the general classification description of furniture not otherwise specified. The rate to El Paso is 95 cents. We are not advised of the water-and-rail rate. The new third-class rate from Kansas City to Albuquerque will be \$1.19, which we find will be a reasonable maximum for the future.

The rate on packing-house products from Kansas City to Albuquerque is 86 cents and to El Paso 71 cents. We are not advised of the water-and-rail rate to El Paso. In our view the 86-cent rate to Albuquerque is unreasonable to the extent it exceeds 80 cents.

The rate on building and roofing paper from Kansas City to Albuquerque is 80 cents and to El Paso 63 cents. The record does not indicate what the water-and-rail rate is. In our view 70 cents would be a reasonable maximum rate to apply to Albuquerque.

The rates on cast-iron and wrought-iron pipe from Kansas City and St. Louis to Albuquerque are 72 and 74 cents and to El Paso 46 and 51 cents. The water-and-rail rate is 55 cents. With the El Paso rates 9 and 4 cents lower than are required by the water-and-rail competition from the east, the same 9 and 4 cent reduction should be made from the 65-cent maximum at Albuquerque. If the El Paso rate should be increased to the water-and-rail basis of 55 cents, the Albuquerque maximum may be 65 cents from both Kansas City and St. Louis.

The rate on stoves from Kansas City to Albuquerque is 89 cents and to El Paso 89 cents. It does not appear of record what the water-and-rail rate is. Stoves are fifth-class traffic. The new fifth-class rate from Kansas City to Albuquerque will be 85 cents. We think 85 cents will be a reasonable maximum rate on stoves to Albuquerque.

The Albuquerque rate on sirup and sugar is 64 cents and the El Paso rate 55 cents. The water-and-rail rate on sugar is 65 cents and on sirup (glucose) 66 cents. As the water-and-rail rate is as much as 65 cents, no fourth section relief will be granted. We find that 60 cents will be a reasonable maximum rate from Kansas City to Albuquerque.

The rate on wire and nails to Albuquerque is 74 cents and to El Paso 62 cents. The water-and-rail rate to El Paso is 54 cents. The carriers from Kansas City have not met the water-and-rail rates from the east on these commodities. The present 74-cent rate we find is unreasonable to the extent it exceeds 70 cents.

It is our further view that the rates to Las Vegas, Santa Fe, Belen, Rincon, Vaughn, Roswell, Carlsbad, Pastura, and Alamogordo should not exceed those herein prescribed as maxima to Albuquerque. At present the Rock Island blankets all stations from Pastura to Alamogordo under one rate. The rates on classes and commodities to these stations are somewhat lower, generally speaking, than to Albuquerque. We do not feel that Alamogordo is entitled to a lower rate than Albuquerque. We have therefore prescribed the Albuquerque rates as maxima to these blanketed points from Pastura to Alamogordo. This will not interfere with the Rock Island, if it so desires, grading back from Alamogordo into lower rates at Pastura. To Deming, Silver City, Gallup, Lordsburg, and other points to which class rates are adjusted in conformity with this report, the commodity rates established should bear the same relation to the commodity rates herein prescribed to Albuquerque as the class rates herein fixed to those points bear to the class rates to Albuquerque.

The commodity rates from St. Louis and Chicago to all New Mexico points should not exceed the contemporaneous rates from Kansas City by more than 10 cents and 20 cents per 100 pounds, respectively.

Our findings as to commodity rates apply only to those cases in which commodity rates are now published. We can not attempt upon this record to determine in what cases, if any, additional commodity rates should be established. Neither can we attempt to say what would be reasonable commodity rates to apply on the commodities above named to points other than those to which rates are herein prescribed. The fourth section requirements, which we hold should be observed, will set the maximum rates to main-line points directly intermediate to those to which rates are herein fixed. To branch-line points the carriers will be expected to line up their rates in reasonable relation to the class and commodity rates herein prescribed.

We have stated that we are asked to fix the rates on alfalfa hay from and on lumber to points on the Pecos Valley branch of the

Santa Fe. Alfalfa hay constitutes one of the most important products of the Pecos Valley. Its production is the result of irrigation by means of artesian wells. The main alfalfa-producing area in the Pecos Valley lies between Roswell and Artesia, but considerable hay is also raised at other points. Comparatively little is produced on the Pecos Valley branch of the Santa Fe south of the New Mexico state line. The principal market for Pecos Valley hay is Texas, Louisiana, and points in the southeast. There are two available routes for this traffic: One north out of the valley via Clovis and Texico, thence southeast and east via Lubbock, Sweetwater, and Coleman, the traffic moving the entire distance to Fort Worth and other points via the Santa Fe; the other south out of the valley via the Santa Fe to Pecos, thence east via the Texas & Pacific to Fort Worth, this line crossing that of the Santa Fe at Sweetwater, 202 miles west of Fort Worth. All hay-producing stations on the Pecos Valley branch of the Santa Fe are blanketed under one rate. To Fort Worth, using Fort Worth as a typical point of destination, there is in effect from these blanketed points, via the Santa Fe, Clovis, and Texico, a rate of 30 cents per 100 pounds. Just east of the New Mexico-Texas line from Texico is Farwell, Tex. The local rate from the Pecos Valley hay-producing points to Farwell is 15 cents per 100 pounds, but there is also available a proportional rate of 12 cents per 100 pounds, minimum weight for a 36-foot car 20,000 pounds. The rate from Farwell to Fort Worth is 18 cents per 100 pounds, minimum weight 17,000 pounds. The latter rate is one prescribed by the Texas commission, and inasmuch as it carries a lower minimum and certain desirable storage privileges, a large percentage of the Pecos Valley hay is billed locally to Texico and rebilled from Farwell. Of a total of 3,445 cars of hay shipped out of the Pecos Valley for the year ended November 30, 1913, 2,740 were rebilled from Farwell. On shipments south out of the valley via Pecos and the Texas & Pacific the through rate is 3 cents higher than via Texico and the Santa Fe. The Santa Fe, by reason of its desire to secure to itself the entire haul on traffic to Fort Worth and other Texas points reached by it, refuses to enter into joint rates with the Texas & Pacific via Pecos or to permit its cars loaded with hay to be taken off its line onto that of the Texas & Pacific. The local rate from the hay-producing stations on the Pecos Valley branch to Pecos is 15 cents per 100 pounds, and there is no lower proportional rate. From Pecos to Fort Worth via the Texas & Pacific the rate is 18 cents, this rate being one prescribed by the Texas commission. The through charge via Pecos is therefore 33 cents. The contention of the Pecos Valley complainant is that the 30-cent rate via Farwell and the Santa Fe is too high, and that lower rates should apply both via Farwell and the Santa Fe and via Pecos and the Texas & Pacific.

Complainants compare the hay situation in the Pecos Valley with that dealt with by us in *Mesilla Valley Produce Exchange v. A., T. & S. F. Ry. Co.*, Unreported Opinion A-229. In that case the complainants attacked the rates on hay from Berino to Rincon, N. Mex., inclusive, to La Tuna and El Paso, Tex., as factors in the through rates to points in Texas and Louisiana. These points of origin are on the line of the Santa Fe north from El Paso. La Tuna is situated at the Texas-New Mexico line. The rate from La Tuna and El Paso to Texas common points was 21 cents, which was the rate prescribed by the Texas commission to apply from El Paso. The rates attacked, which were added to the 21-cent rate in making the through charge, varied from 5 to 9½ cents to La Tuna and from 7½ to 9 cents to El Paso for distances of from 6 to 57 miles to La Tuna and from 19 to 76 miles to El Paso. We held that the rates attacked, as part of the through interstate charge, subjected the hay shippers of the upper Mesilla Valley in New Mexico to undue prejudice and disadvantage and gave to the Texas shippers in the lower valley an undue preference and advantage. As a result of that finding and in accordance with suggestions of the Commission contained in its report the Santa Fe published for application to through shipments into Texas a revised scale of rates to La Tuna and El Paso graded according to distance and ranging from 3½ cents to 5½ cents per 100 pounds. The resulting through rates to Fort Worth range from 24½ cents from Berino, the first station north of the state line, to 26½ cents from Rincon.

The essential point of difference between the situation in that case and in the one now before us lies in the fact that in the *Mesilla Valley case* the hay-producing area was practically continuous from El Paso north to Rincon, while in the present case there is a distance of 57 miles between the last hay-producing station on the Pecos Valley branch of the Santa Fe in New Mexico and the first producing station on that branch in Texas. It also appears that during the year ended November 30, 1913, only 19 cars were shipped out from stations on the Pecos Valley branch south of the New Mexico-Texas line, these shipments having been made from Arno and Patrol. Hay is shipped, however, from Barstow, Tex., just east of Pecos, on the Texas & Pacific. It would therefore appear that there is not here the degree of competition between the New Mexico and Texas shippers of hay on the Pecos Valley branch of the Santa Fe that was shown in the *Mesilla Valley case* between the New Mexico and Texas shippers on the Santa Fe's line north from El Paso.

The present rate of 30 cents from the Pecos Valley to Fort Worth and other Texas points applicable via Farwell and the Santa Fe was prescribed by us as maximum in 1907 in the *Roswell Commercial*

Club case, already referred to. The old rate was 34 cents. At that time the route from the Pecos Valley to Fort Worth was via Amarillo and Winfield, Kans., a distance from Roswell of 885 miles. Since that decision the Santa Fe has constructed and put into operation its line from Canyon City, N. Mex., to Coleman, Tex., via which route the distance to Fort Worth is 788 miles. Since the present hearing it has opened for operation its cut-off from Texico to Lubbock, via which route the distance to Fort Worth is 723 miles. The distance from Roswell to Fort Worth via Pecos and the Texas & Pacific is 565 miles. Much of this hay, however, is consigned to the lumber districts of Texas and Louisiana, to which the route of the Santa Fe is more direct than to Fort Worth, and to many of these points it is as short or shorter than the other routes.

Considering all the facts of record we are of opinion and find that the rate on hay from the Pecos Valley to Fort Worth and the other points to which the present 30-cent rate is effective should not exceed 28 cents per 100 pounds. We are not convinced of the necessity or propriety of opening the Pecos gateway to this traffic by the establishment of the 28-cent rate as a joint rate with the Texas & Pacific via Pecos. To Fort Worth the distance via the latter route is somewhat shorter than via the Santa Fe, but to many other large consuming sections reached by the Santa Fe the difference in distance, if any, is not to be regarded as substantial or controlling, considering the length of the haul. One of the Pecos Valley shippers testified concerning delays on certain shipments routed via the Santa Fe. The testimony of other witnesses was to the effect that the Santa Fe's service was satisfactory. The record as a whole does not establish that the Santa Fe service is inadequate on this hay traffic and does not warrant the establishment of joint rates via Pecos on that account.

The interveners from Carlsbad and other lower Pecos Valley points suggest that the rates should be graded up with the distance from Pecos. We do not feel warranted in disturbing the present plan of grouping all Pecos Valley producing points under one rate. Neither do we feel justified in granting the prayer of the Pecos Valley complainants for a reduction in the present minimum weight of 20,000 pounds on hay. The record does not establish that with reasonable care in loading this minimum can not be accommodated in the ordinary car.

The rates on lumber to the Pecos Valley in issue here are those applicable from producing points in Texas, Louisiana, and Arkansas. The rate is 32 cents per 100 pounds from Beaumont and other points in Texas and Louisiana on the Santa Fe, 35 cents from Texas mills on lines other than the Santa Fe, and 37 cents from mills in Louisi-

ana and Arkansas on lines other than the Santa Fe. The 32-cent rate from Beaumont was prescribed as maximum by us in 1907 in the *Roswell Commercial Club case* referred to. The rate condemned was 45 cents. Our order in that case prescribed the maximum rate from Beaumont, Tex. The lumber complainants here, who were also complainants in the other case, assert that the complaint in that case was directed against the rates from all mills on all lines in the Beaumont district, and suggest that the omission from the order of other points in that district was inadvertent. The Santa Fe insists, on the other hand, that its line was the only defendant in that case reaching Beaumont or the immediate lumber-producing vicinity of Beaumont, and that plainly our order was intended to apply only from Beaumont. However, subsequent to that decision the Santa Fe extended the 32-cent rate from Beaumont to apply from Center, Longview, and Ore City, Tex., and from other points on its line in Louisiana. The distance from Beaumont to Roswell is 845 miles and from Ore City to Roswell 1,035 miles. The 35-cent rate was published from points in Texas on lines other than the Santa Fe upon agreement of the representatives of the Santa Fe and the lumber dealers of the Pecos Valley reached subsequent to the decision. Later they conferred at different times concerning the proper rate to apply from connecting line mills in Louisiana and Arkansas, but were unable to agree. Thereupon the Santa Fe published the 37-cent rate from those mills, which was 5 cents higher than the rate we prescribed as maximum from Beaumont.

It is the contention of the lumber dealers of the Pecos Valley that an adequate supply of lumber of the kind demanded by the trade, especially in the matter of variety, can not be procured from the mills reached by the Santa Fe, and that access should be permitted them to the mills on all lines in the great lumber-producing districts of Texas, Louisiana, and Arkansas, which, as to many points, including El Paso, are blanketed under one rate. The rate from the Beaumont district to El Paso is 25 cents, and this rate is blanketed to include many points in Louisiana and Arkansas. The rate to Pecos and Farwell is 23½ cents and to Amarillo 21½ cents. In *Bascom-French Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 388, we prescribed a maximum rate of 28 cents from mills in Texas and Louisiana to Las Cruces, N. Mex., a point on the Santa Fe 44 miles north of El Paso.

We find that the present rates on lumber to the Pecos Valley points are unreasonable to the extent they exceed 30 cents from Santa Fe mills in Texas and Louisiana, 33 cents from mills on connecting lines in Texas, and 35 cents from mills on connecting lines in Louisiana and Arkansas. We do not feel warranted upon this record in disturbing the present relation of rates between producing points in

Texas, Louisiana, and Arkansas, or between producing points on the line of the Santa Fe and its connections.

We shall make no order with respect to the hay and lumber rates, as we are not definitely advised as to all the points that should be covered by the order, but we shall expect the carriers to give effect to these findings in connection with their compliance with the order herein entered covering the other rates prescribed, otherwise the question of the proper order to be entered with respect to the rates on hay and lumber will be given further consideration.

We therefore find that certain of defendants' rates on the classes and on the commodities heretofore named from and to the points mentioned are unreasonable under section 1 of the act or unduly prejudicial under sections 3 and 4 to the extent heretofore indicated and that the rates and relations of rates prescribed herein and in the fourth section orders entered in connection herewith will be reasonable and not unduly prejudicial for the future.

It may be that in some instances the findings and order herein will be directed against rates which are already as low as those prescribed by us as maxima. If so, it results from the fact that we have dealt with the entire body of rates attacked as a whole for the sake of simplicity. In those cases no change will, of course, be required in the rates. The order herein will be made against all the rates, but with the recital that reductions are required only in such of them as exceed the reasonable maximum rates prescribed by us.

We are not convinced that the rates on traffic from the Pacific coast region, including those on lumber and sugar, should be reduced. The relation under the fourth section of the rates on sugar to Trinidad and points intermediate has been passed upon by us in connection with previous fourth section applications. Also the relation under the fourth section of the rates on sugar to Amarillo and intermediate New Mexico points has been established by us with respect to all points in New Mexico west of Vaughn. To stations on the Santa Fe from Vaughn to Clovis, inclusive, from California points, including San Francisco and Los Angeles, we find that the rate on sugar is unreasonable and unduly prejudicial to the extent it exceeds the rate contemporaneously applicable from the same points of origin to Tucumcari. Such fourth section departures as now exist on traffic from the west which have not been passed upon by us will be disposed of in connection with fourth section applications now pending.

Orders will be entered accordingly.

No. 3841.

MEMPHIS GRAIN & HAY ASSOCIATION ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted March 6, 1914. Decided June 14, 1915.

The transportation advantage of reshipping rates applied from St. Louis to Mississippi Valley on grain and mixed feed is no longer undue in its effect upon Memphis grain dealers; but the relief granted in extending the territory from which Memphis dealers may draw grain under the transit arrangement appears incomplete with respect to southwestern producing territory.

C. L. Marsilliot and C. B. Stafford for complainants.

M. P. Callaway for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This case, which was disposed of without formal order on June 4, 1912, 24 I. C. C., 609, is again before us on a supplemental complaint based upon the alleged failure of the defendants, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, so to readjust their tariffs as to accord the full relief suggested in the original report. It was there found that under the rate structure and transit rules then applicable to grain and mixed feeds Memphis was unduly restricted in its source of supply when compared with the access of St. Louis to a materially more extensive producing territory through the maintenance of a system of reshipping rates. The result of this, as we found, was to give to St. Louis an undue advantage over Memphis in reaching points of consumption in the Mississippi Valley that are geographically in Memphis territory rather than in St. Louis territory. In announcing these conclusions we entered no order, but left it to the carriers to remedy the situation by establishing reshipping rates from Memphis or by pursuing some other course that would give that community an equal opportunity with St. Louis in supplying the wants of the consuming points in question. The complainants admit that all the defendants have readjusted their transit rules so as to give Memphis ample relief, except in the case of the Illinois Central and the Yazoo & Mississippi Valley. These lines, hereinafter referred to in the singular as the defendant because of their close affiliation, contend that they also have removed the undue advantages in favor of St. Louis by a readjustment of their rate structures and transit rules. The issue is thus raised as to the

nature, extent, and effect of the changes in rates and transit practices made by these lines under the original report in this controversy.

When the original complaint was filed, through rates on grain to Mississippi Valley points over the Illinois Central were applicable under a transit arrangement through Memphis only when the grain originated on the lines of the Illinois Central, the Chicago, Burlington & Quincy, the Wabash, and the South Dakota Central, and then only when the line of the Illinois Central was used into and out of Memphis. With their source of supply thus restricted, Memphis grain dealers were obliged to pay the combination of local rates on grain originating in other territory and on grain that did not move into and out of Memphis over the line of the Illinois Central, while St. Louis dealers could draw grain from a much wider region of production and reship it to points in the Mississippi Valley under a system of reshipping rates that were equivalent to the balance of the through rate and were applicable without regard to the line that hauled it into St. Louis. The situation with respect to mixed feeds was substantially the same, although the disadvantage to the Memphis dealer in selling this commodity was enlarged somewhat by the necessity of paying local rates on the outbound movement of nontransit ingredients used in the manufacture of feed. The details of the arrangement then existing are more fully set forth in the original report, *supra*, and we are required now only to determine whether the steps taken by the defendant here to remedy the situation are sufficiently adequate.

In the readjustment of its tariffs the Illinois Central met the requirements of Memphis with respect to grain produced in the states of Missouri, Nebraska, Iowa, South Dakota, Wisconsin, Minnesota, Illinois, and Indiana, by establishing through rates to Mississippi Valley points with a liberal transit arrangement at Memphis; and it extended this arrangement to traffic transported under combination rates where through rates were not established. Originating points on every line of railroad within the described territory are therefore now available to Memphis under the single restrictive rule that delivery must be made to the Illinois Central at its junctions in the states named. No restrictions were imposed on the outbound movement from Memphis except on grain that reaches the Illinois Central at St. Louis or Ohio River crossings. In other words, the movement from Memphis to Mississippi Valley points may now be made over any available line except when the grain is delivered on combination rates to the Illinois Central at St. Louis or at an Ohio River crossing, in which event the line of the Illinois Central must be used both in and out of Memphis. Although as sources of supply St. Louis and the Ohio River crossings are thus partially closed on transit grain, it is understood that grain from these points transported over the line of the Illinois Central may now move out-

bound from Memphis under established reshipping rates to points of consumption on the lines and connections of the St. Louis & San Francisco and the Mobile & Ohio. The readjustment, however, does not make available the line of the Illinois Central with a transit privilege at Memphis on grain from Kansas, Missouri, Oklahoma, and Arkansas to Mississippi Valley points when hauled into Memphis over the lines of the St. Louis & San Francisco, St. Louis, Iron Mountain & Southern, and the Chicago, Rock Island & Pacific. The record shows that through rates are in effect from this southwestern producing territory through Memphis, but that Memphis dealers can not participate in this traffic except upon payment of the combination rates.

The system of reshipping rates in force from St. Louis has not been disturbed; the Memphis grain dealers are still excluded from Mississippi Valley points on grain from southwestern territory, and are also denied unrestricted access to these points on grain from St. Louis and Ohio River crossings. Aside from these restrictions the outbound local rate must be paid on nontransit ingredients used in the manufacture of mixed feed. In these particulars the remedy applied is claimed to be ineffective. But, say the complainants, the remedy will be complete if the Illinois Central will open its lines from Memphis under a system of reshipping rates 6 cents lower than those now maintained from St. Louis, this 6-cent differential being of long standing in the establishment of rates to the southeast from St. Louis and Memphis. To this adjustment the defendant objects upon several grounds, the more important of which are that (a) the low reshipping rates are maintained from St. Louis to meet the competition of the Mobile & Ohio, which carrier having no rails beyond St. Louis into the grain producing territory initiated the system of reshipping rates to attract grain to its line at St. Louis; (b) that similar competition at Memphis can not be profitably met in the same way because of the shorter hauls; (c) that the present outbound rates from Memphis are exceptionally low and to further reduce them by establishing reshipping rates would be confiscatory; and (d) that the establishment of reshipping rates from Memphis on grain from southwestern territory would not only increase the proportion of the through rates now accruing to the lines west of Memphis at the expense of the defendant carrier, but would also reduce the through rates and generally disturb a delicate structure.

The complainants, on the other hand, insist that there is no justification in meeting the competition from St. Louis and not from Memphis when the circumstances are substantially similar. While this contention is sound in its general application, it is without weight unless undue advantage on the one side and unjust discrimination on the other arise from the difference in treatment. The complainants further urge that the reshipping rates proposed from Memphis, while

admittedly low, will yield to the defendant carrier car-mile and ton-mile revenues greater than afforded under the reshipping rates from St. Louis. But from the illustrative tests presented by both parties we are convinced that to most of the important points in Mississippi Valley the proposed reshipping rates would not be remunerative.

With reference to the restriction imposed against grain reaching the Illinois Central at St. Louis and Ohio River crossings, we are of the opinion that the widening of the territory in the middle west from which Memphis may now draw grain has circumscribed the advantage heretofore existing in favor of St. Louis to a point where it is no longer undue. This view, however, has no application to grain from southwestern territory that reaches Memphis over western lines. This territory, we think, should be made available to Memphis under a transit arrangement that will permit the participating carriers to retain the proportions they now receive in dividing the current through rates. The objection of the defendant carrier would thus be overcome, and the restrictions of which Memphis complains more completely removed. Under such an arrangement Mississippi Valley points could be reached through Memphis from all producing territory upon a rate basis substantially equal to that in force through the St. Louis gateway.

In reaching these conclusions we are not unmindful of the inconveniences attending the transit arrangement, as compared with the more simple method of reshipping. It appears from the record, however, that the reshipping rates from St. Louis are restricted to points of origin between the Mississippi and Missouri rivers and that grain from other territory is handled at St. Louis, as it is at Memphis, under a transit arrangement. It is also shown that the sum of the rate into St. Louis and the outbound reshipping rate in many cases exceeds the through rates to Mississippi Valley points. In the light of these observations, coupled with the remedial effect produced by enlarging the territory from which Memphis may draw grain, we think the transportation advantage of the reshipping rates applied from St. Louis will no longer be undue in its effect upon Memphis grain dealers. It is our view, nevertheless, that the relief afforded appears incomplete to the extent that southwestern producing territory has not been made available. But from the present record we are unable to determine the measure of advantage in behalf of St. Louis and against Memphis that may arise from this cause. In view of the manner in which the parties before us in this proceeding have presented their respective contentions, it is our understanding that the carriers will promptly afford the additional relief here suggested, and that no order will be necessary; we shall hold the record open, however, for such further action as may be required.

No. 3589.
H. S. GILE & COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 1, 1913. Decided June 2, 1915.

Through transcontinental carload and less-than-carload commodity rates to Willamette Valley and points south of Portland, Oreg., made by adding to the rates to Portland the local class rates from Portland to destination, found unreasonable, although not unduly preferential to points between Portland and Tacoma. Reasonable rates prescribed for the future.

E. M. Cousin for complainants.

A. C. Spencer for Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Union Pacific Railroad Company.

Cary & Kerr, C. A. Hart, and W. J. Bohon for Oregon Electric Railway Company.

R. E. Moody and B. C. Dey for Southern Pacific Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

By THE COMMISSION:

Complainants' original petition herein, filed October 14, 1910, attacked as unreasonable and unduly prejudicial increased carload and less-than-carload rates from defined eastern territory to points in the Willamette Valley in Oregon, both through Sacramento, Cal., and through Portland, Oreg. The increased rates proposed through Sacramento were alleged to have closed that gateway, while the rates proposed through Portland were alleged to be unreasonably high for articles included in the first four classes of freight. Reparation was asked. Counsel for complainants stated at the hearing that it was not desired to try questions relating to rates, and by agreement the hearing was confined to a consideration of the alleged closing of the route through Sacramento on account of rates through Sacramento considerably higher than the rates through Portland. The question thus tried was disposed of in *Gile & Co. v. S. P. Co.*, 22 I. C. C., 298, as follows:

The Sacramento gateway has not been closed. Traffic may still move, if routed that way, to Oregon points. The rate resulting from the combination

on Sacramento is, however, so much higher than that by the direct Oregon Short Line route that in effect the Sacramento gateway is closed. This condition calls not for an order establishing a new route, but for an order establishing joint rates. And what should these rates be? Upon this question no issue has been here made and no evidence taken.

* * * * *

Upon the record made an order of dismissal will be entered, reserving, however, the question of reparation upon transcontinental shipments to Willamette Valley points, which matter will be incorporated with and passed upon in the case of the *Railroad Commission of Oregon v. S. P. Co.*, Docket No. 3342, not yet reported.

We have now to consider the rates through Portland, which are alleged to be unreasonable.

Prior to March 22, 1910, a great majority of the rates from the east to Willamette Valley points through Portland were constructed by adding to the Portland rate an arbitrary of 10 cents, blanketed over practically the entire valley. On that date the 10-cent arbitrary was replaced by the full class locals from Portland to destination on the first four classes and on all articles in the first four classes taking commodity rates to Portland, carload or less than carload, with the possible exception of a few commodities on which joint rates were made specifically instead of arbitrarily over Portland. On June 23, 1910, the Oregon Railroad Commission filed a complaint attacking the through rates on the first four classes to points in the Willamette Valley through Portland and asking a reduction to the former basis of a 10-cent arbitrary over Portland. Complainants herein filed a petition of intervention asking reparation. The case was heard before this case. We held, *Railroad Commission of Oregon v. S. P. Co.*, 24 I. C. C., 273, that the factors applicable from Portland to final destination were unreasonable to the extent that they exceeded a lower scale of rates which we prescribed. The carriers subsequently voluntarily established transcontinental class rates to Willamette Valley points the same as the rates to Portland, whereupon our order fixing the factors to be added beyond Portland was vacated. Still later the present case was reheard, except that portion of it which relates to the establishment of a route to the Willamette Valley through Sacramento. Complainants stated at the rehearing that there was no longer any controversy over the class rates but only over the reasonableness of the increased commodity rates through Portland and the question of reparation.

The question of reparation is concluded by our decision in *Railroad Commission of Oregon v. S. P. Co.*, *supra*, where we said:

The rate adjustments to and from the Pacific coast terminals and in intermountain territory have been and are being revised and readjusted under proceedings before us, and we do not regard the instant case as one for reparation.

The only question still open is whether the rates through Portland, as increased March 22, 1910, are unreasonable or unduly prejudicial.

These increases affecting both carload and less-than-carload traffic were made in the same manner and to the same extent as the increases assailed in *Railroad Commission of Oregon v. S. P. Co.*, *supra*, by canceling the 10-cent arbitrary formerly added to the Portland commodity rates and applying instead the class locals from Portland. The record in that case was incorporated in this record, but as the complaint involved only the class rates, the evidence adduced affects this case only to the extent that our findings may be regarded as applicable equally to the class and the commodity rates. No evidence really pertinent to the issue now before us was adduced at the original hearing except certain statements by an official of the Southern Pacific Company elicited by cross-examination. Neither complainants nor defendants offered any evidence upon rehearing relative to the carload commodity rates involved, although it was stated that those rates had not been increased previously since 1890. We observe, however, that there is little if any transcontinental carload movement of the commodities included in the first four classes. Relative to less-than-carload rates defendants exhibited rates on 57 commodities, selected at random, which show that approximately one-half of the commodities involved took rates somewhat lower to Willamette Valley points than to intermountain territory. Defendants accordingly contend that a lower basis of rates is in effect to the Willamette Valley than to intermountain territory in recognition of the advantageous location of the valley in proximity to Portland. However, so many of the rates to the Willamette Valley have been increased that at present the commodities on which they are less than the rates to intermountain territory are comparatively few. Formerly only 5 of the 57 commodities named were on a class basis taking the same rate to Willamette Valley as to Portland; now 26 of these commodities move into the Willamette Valley at terminal class rates.

Transcontinental commodity rates to points between Portland and Tacoma, Wash., are made by adding to the rates to Portland 5 cents per 100 pounds for carloads and 10 cents per 100 pounds for less than carloads. Centralia and Chehalis, Wash., are approximately only 90 miles north of Portland on the Northern Pacific Railway. Industries seeking locations for their plants therefore would go, it is said, to Portland-Tacoma territory rather than to the other territory named. More favorable rates to Centralia and Chehalis than to the Willamette Valley were explained by a witness for the Northern Pacific on the ground that rates to points on that road north of Seattle are strongly influenced by the rates of the Great Northern to near-by points, which are controlled

by actual water competition encountered at tidewater points. As points on the Northern Pacific south of Tacoma had always been on the same rate basis as points north, the northern adjustment was extended to the territory between Tacoma and Portland. Branch lines extending from both Centralia and Chehalis to tidewater points and potential water competition on the Cowlitz River to points on the Northern Pacific north of Kalama also are said to influence rates to points south of Tacoma. There is little, if any, competition between the Willamette Valley and points north of Portland, and this fact, together with influences other than the freight rates, which tend to make Centralia and Chehalis central distributing points, would have a very material bearing upon the establishment of industries at those places. Concerning water competition in the Willamette Valley we said in *Railroad Commission of Oregon v. S. P. Co.*, *supra*:

Upon the whole record it seems clear that whereas the rates to points in the valley were at one time controlled by water and rail competition, this can hardly be said of them at the present time, certainly not to the extent that was formerly the case.

Complainant developed by cross-examination that the rates on shipments into the Willamette Valley through Portland divide the same to the Southern Pacific for its haul beyond Portland as the rates in effect prior to March 22, 1910. The entire benefit of the increases effected, therefore, accrues to the lines involved east of Portland.

Upon all of the facts of record we find that defendants have refuted complainants' charges of undue preference to points between Portland and Tacoma, but have failed to show that the increased rates are just and reasonable. We find the rates to be unjust and unreasonable to the extent that they exceed the class rates fixed in *Railroad Commission of Oregon v. S. P. Co.*, *supra*, which rates, as stated in the order herein, will be prescribed as maxima for the future. There is no evidence of record upon which we can make a finding with respect of the rates on commodities rated lower than fourth class.

An appropriate order will be entered.

No. 7081.
MOORE & THOMPSON PAPER COMPANY ET AL.
v.
BOSTON & MAINE RAILROAD.

Submitted November 11, 1914. Decided June 3, 1915.

Rates for the transportation of imported wood pulp from Boston, Mass., to various New England points not found unreasonable or unjustly discriminatory. Complaint dismissed.

O. M. Rogers for complainants.

C. H. Tiffany for intervener.

E. J. Rich and *W. A. Cole* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations and copartnerships engaged in the manufacture of paper at Bellows Falls and East Ryegate, Vt.; Holyoke, Millers Falls, Turners Falls, and Lawrence, Mass.; Hinsdale, N. H.; and North Hoosick, N. Y. By complaint, filed July 6, 1914, they allege that the rates charged by defendant for the transportation of imported wood pulp in carloads from Boston, Mass., to the points named are unreasonable and unjustly discriminatory to the extent that they exceed the rates on domestic wood pulp from Boston to the same points. Reparation is asked.

The New England Paper and Pulp Traffic Association, whose members include paper manufacturers located at various points in Maine, New Hampshire, Massachusetts, and Rhode Island, intervened, representing that any order entered will or should affect the rates to points at which its members' mills are located and that its members should be given the benefit of any action taken by the Commission in awarding reparation or in fixing rates for the future. Except Lawrence, the destination mill points named by intervener are different from the points in the original complaint. To the extent that the petition for intervention goes beyond the issues raised by the original complaint it can not be considered.

Wood pulp, used as the basic raw material in the manufacture of paper, is obtained by a variety of processes of manufacture. Different processes are used by different mills. New England paper mills utilize both domestic pulp and pulp imported from Norway, Sweden, Russia, Germany, Austria, and Canada. Imported pulp ranges in weight from 50,000 pounds to 60,000 pounds per car; domestic pulp,

from 40,000 pounds to 50,000 pounds. Both kinds of pulp range in price from \$1.90 to \$2.90 per 100 pounds, the foreign pulp, ex dock; the domestic pulp, delivered at the mills. Domestic pulp is made in sheets which are rolled or made into bundles and tied with string while they are wet. It is shipped in this condition, and it is necessary to line the car with paper to keep the pulp clean. A given quantity generally consists of from 50 per cent to 60 per cent of dry pulp and of from 50 per cent to 40 per cent water. Imported pulp also is rolled into sheets but is subjected to a drying process which reduces the amount of moisture in it to approximately 10 per cent of its total weight. It then is compressed into bales weighing from 280 pounds to 450 pounds, wrapped in cloth, and bound with wire or iron. Some imported pulp, used in the manufacture of manila paper, resembles heavy cardboard, and the pulp itself is used as a wrapper for the bale.

The present rates from Boston and the ton-mile earnings under them compare as follows:

From Boston to—	Dis- tance.	Domestic pulp.		Imported pulp.	
		Rate per 100 pounds.	Earn- ings per ton-mile.	Rate per 100 pounds.	Earn- ings per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Lawrence, Mass.....	26	4½	36.5	5	38.4
Millers Falls, Mass.....	97	7½	16	9	18.6
Turners Falls, Mass.....	107	8	15	10	18.7
Bellows Falls, Vt.....	114	8½	14.5	10	17.5
Holyoke, Mass.....	114	8½	14.5	10	17.5
Hinsdale, N. H.....	110	8	14.5	10	18.2
North Hoosick, N. Y.....	166	9½	11.4	11	13.2
East Ryegate, Vt.....	168	9½	11.83	13	15.5

Complainants' chief ground of complaint against the rate on imported pulp is the maintenance of lower rates on domestic pulp. They also assert, however, that defendant's ton-mile earnings on imported pulp are considerably higher than the average ton-mile earnings for defendant's entire system. Other rates on domestic pulp and the ton-mile earnings under them are cited to and from New England points, of which the following are typical:

Commodity.	From—	To—	Dis- tance.	Carload rate per 100 pounds.	Earn- ings per ton-mile.
			<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Wood pulp.....	Boston, Mass.....	Cumberland Mills Junc- tion, Me.	114	8.25	14.5
Do.....	do.....	Willsborough, N. Y.....	310	16.3	10.35
Do.....	Berlin, N. H.....	Gouverneur, N. Y.....	340	13.1	7.7
Do.....	Groveton, N. H.....	do.....	332	13.1	7.9
Do.....	Wilder, Vt.....	Corinth, N. Y.....	223	13.7	12.3
Do.....	New York, N. Y.....	Turners Falls, Mass.....	170	11	12.9
Do.....	Wells River, Vt.....	Patterson, N. Y.....	307	18½	12.2
Do.....	East Ryegate, Vt.....	Westboro, Mass.....	201	12½	12.2
Box board or wood- pulp board.	Haverhill, Mass.....	Greene, Me.....	123	10	16.2
Pulp board.....	Bradford, Mass.....	do.....	194	10	16.1

As indicating that the carload rates are unreasonably high, numerous instances are cited where defendant maintains the same rates on carload and less-than-carload shipments. It is shown also that defendant applies from Commonwealth pier on the New York, New Haven & Hartford Railroad at Boston the same rates as from its own docks, absorbing the switching charges of the New Haven and of the Union Freight Railroad. Complainants contend further that imported pulp is entitled to a lower rate because it loads heavily and is desirable traffic; that imported wood pulp is included with lumber in defendant's forest products tariff; that domestic lumber moves from Boston at a lower rate than imported pulp; that the dry condition in which imported pulp is shipped renders it less liable to damage in transit than wet domestic pulp.

The discrimination alleged apparently is based exclusively upon the difference in rates applied to imported and domestic pulp, and except for an undisputed showing that the two kinds of pulp actually compete the evidence adduced to prove the rates assailed unreasonable is the only evidence adduced to prove unjust discrimination.

Defendant maintains that the higher rates on imported pulp than on domestic pulp are justified first because of the difference in value per car of the two kinds of pulp due to the large percentage of water contained in domestic pulp, on which the shipper has to pay the rate on pulp; second, because the expense of from 15 to 18 cents per ton for loading imported pulp is borne by the carrier, whereas domestic pulp is loaded by the shipper; third, because the carriers have an inbound haul of the pulp wood used to manufacture domestic pulp which they do not have in the case of imported pulp. There is said to be no movement of domestic wood pulp from Boston, so that domestic rates cited are mere paper rates applicable only because they are included in defendant's general forest products tariff. Defendant's average system earnings are said not to afford a proper measure of the earnings on a particular commodity between specific points. Defendant also states that the rates from Commonwealth pier cited by complainants are maintained under a contract with the state of Massachusetts and that relief is now being sought from the obligation on the ground that under the existing rates and absorptions the service from this pier often results in an absolute loss. Defendant concedes that there should be a difference between carload and less-than-carload rates, but argues that the remedy is to increase the less-than-carload rates. Wood pulp moves almost exclusively in carloads. The number of damage claims filed on account of shipments of pulp has been negligible.

Defendant has undertaken a general revision of its tariffs, but revisions of the import rates on wood pulp have not yet been reached.

Upon all the facts of record we find that the rates attacked are not shown to be unreasonable, intrinsically or relatively; neither are they shown to be unjustly discriminatory.

An order dismissing the complaint will be entered.

No. 6275.

WESTERN NEWSPAPER UNION

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted May 19, 1914. Decided June 17, 1915.

The present less-than-carload classification rating on lead stereotype plates, new and old, in official and southern classification territories not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

C. E. Childe and *E. F. Brown* for complainant.

A. P. Burgwin for Pennsylvania lines west and Pennsylvania Railroad Company.

R. N. Collyer for defendants in official classification territory, except the Pennsylvania system.

REPORT OF THE COMMISSION.

McCHORD, *Chairman*:

This case involves the less-than-carload classification rating on lead stereotype plates, new and old, in official and southern classification territories. The complaint attacks as unreasonable and unjustly discriminatory the present classification rating of first class on new stereotype plates and third class on old stereotype plates. It prays for a rating on new plates not to exceed third class and a rating on old plates not to exceed fourth class in official classification territory and fifth class in southern classification territory. Reparation is asked on all returned shipments of old plates.

Complainant is a corporation organized under the laws of the state of Illinois, with principal office at Chicago, and is engaged in the manufacture, rental, and sale of lead stereotype plates for newspapers, newspapers' patent insides, etc. In the regular course of its business it ships new stereotype plates, boxed, in less-than-carload lots, from its offices in Atlanta, Ga.; Baltimore, Md.; Birmingham,

34 I. C. C.

Ala.; Boston, Mass.; Charlotte, N. C.; Chicago, Ill.; Cincinnati, Ohio; Cleveland, Ohio; and Columbus, Ohio, to points in official and southern classification territories, consigned principally to small newspaper publishers.

The American Press Association, a corporation organized under the laws of West Virginia, with principal place of business at New York, N. Y., whose business is stated to be practically identical with that of the Western Newspaper Union, intervened on behalf of complainant.

The metal from which these plates are made is what is known as antimonial lead, being approximately 85 per cent pure lead, 12 per cent antimony, and the balance made up of tin, copper, nickel, etc., which are in the lead in its natural state and are not eliminated by complainant's process of refining. In manufacturing the plates the matter to be printed is first set up in type, from which a matrix is made on matrix paper. This is then dried, placed in a stereotype casting box, and the molten antimonial lead is poured in on the face of the matrix, resulting in these plates. The plates are then cut into standard lengths of $19\frac{3}{4}$ inches, six plates being required for the printing of a newspaper page, the weight of the plates being approximately 12 pounds per page. The plates manufactured by the American Press Association, it was testified, weigh 10 pounds per page.

The new plates are shipped in specially made boxes, in 1, 2, 3, and 5 page sizes. The shipping weight of the 1-page size is 17 pounds; the 2-page size, $31\frac{1}{2}$ pounds; the 3-page size, $43\frac{1}{4}$ pounds. In packing, cardboard is placed between the plates to protect the face of the type.

The plates are at all times the property of complainant. The publishers who use them pay a rental thereon ranging from \$1 to \$1.50 per page, according to the matter to be printed. If the publisher fails to return the plates, under the contract, complainant assesses a charge of 20 cents per column as a penalty for such failure to return. Complainant gives as the reason for insisting upon the return of the old plates that it keeps down their metal inventory; that is, reduces to a minimum the amount of new metal they shall be required to purchase each year in carrying on their business.

Shipments of new plates are made from the various offices of complainant mentioned above to points in official and southern classification territories. It is asserted by complainant that 60 per cent of the shipments in point of number go forward by freight and 40 per cent by express and other means, while as to tonnage 80 per cent of the shipments move by freight. During the year ending December 31, 1913, complainant shipped in the territories here involved approximately 2,000,000 pounds of these new plates. The average weight

per shipment is not disclosed by the record. It is the understanding between complainant and users of the plates that the used or old plates shall be held until there is a sufficient accumulation to make a freight shipment, it being claimed that 99 per cent of the returned shipments are made by freight, the average weight per shipment being shown for one month as 99 pounds.

In all cases the freight charges on shipments of new plates are paid by the parties to whom the plates are consigned. There is nothing in the record to indicate that such parties have complained that the present classification rating on these plates is unreasonable or discriminatory or that the freight charges under such classification are burdensome.

That complainant's business has prospered under the present rating is apparent from the statement of complainant's witness that the Western Newspaper Union and the American Press Association together control at least 98 per cent of the lead stereotype plate business in the two territories here involved, their only competitor being a small firm located at Canton, Ohio. It was further stated by complainant's witness that out of slightly more than 7,000 publishers in these territories who might use these plates at least 5,000 actually were customers of complainant.

In support of its contention for a lower classification rating on new plates complainant makes comparison as to value between these plates and such articles as clocks, barometers, pistols, shotguns, hosiery and dry goods, and other commodities listed as first class in the official and southern classifications, but nothing is shown as to the relation such articles bear to these plates as to character, use, bulk, weight, tonnage, or volume, risk, cost of carriage, and controlling conditions caused by competition, all of which have been repeatedly held by the Commission to be basic elements of freight classification. The ratings here sought are in effect in western classification territory, but as stated in *Dixie Manufacturing Co. v. B., C. & A. Ry. Co.*, 31 I. C. C., 337—

We have frequently held that a mere showing of the fact that the rating in one classification territory is different from the rating on the same article in another territory does not establish that either of the ratings are unreasonable or unduly prejudicial.

With respect to the old stereotype plates, the classification ratings sought are fourth class in official classification territory and fifth class in southern classification territory. These are the ratings applied in these territories on scrap lead. Complainant claims that the shipments of old or unused plates returned by publishers are in fact nothing more than scrap lead, and therefore entitled to be rated as such. It was testified by complainant's witness that the

old and unused plates when returned are thrown into a pile and are never again used for any purpose other than remelting.

The plates are returned to complainant in the same boxes in which they were first shipped to the publishers, the box being marked by a label pasted on the outside designating the contents as "old stereotype plates." The freight charges on these returned plates are in every instance paid by complainant. It sometimes becomes necessary for the publisher to cut up some of the plates to meet the requirements in filling space in the newspapers, but each box contains the same number of plates, either in full lengths or cut up, as was originally shipped. The returned plates are put into the box without cardboard to protect the face of the plates.

That the old and unused plates so returned are in fact scrap lead is denied by defendants, it being contended that the plates are not broken into scrap as such; that in fact unused plates, which are in all respects new plates, are returned in the same box with the used plates and should actually take first-class rating. The inability of the carrier to distinguish between the new and old plates and the possibility of misrepresentation in these shipments, although no such misrepresentation was claimed, were further set up by defendants in support of the present classification. It is claimed by defendants that the traffic as a whole, both in new and old plates, is not desirable or remunerative on account of the small shipments, both in tonnage and volume, which move over short distances, complainant having so placed its distributing offices as to cover the territories most advantageously. Manifestly old or used antimonial lead stereotype plates, made of specially prepared metal containing just the requisite amount of antimony to meet the requirements of complainant's business and which may be remelted and used without further preparation, is not mere scrap lead.

In *Forest City Freight Bureau v. A. A. R. R. Co.*, 18 I. C. C., 205, the Commission held:

The volume and desirability of the traffic, hazard of carriage, and the possibility or probability of misrepresentation of the article are considerations of prime importance in classification. At best it is but a grouping, and when an approximation resulting from it is not found to cause the exaction of an unreasonable or discriminatory charge it will not be disturbed.

Complainant has failed to show that the present classification ratings on less-than-carload shipments of lead stereotype plates manufactured by it, new and old, are unreasonable or unjustly discriminatory, and the complaint herein must be dismissed.

No. 7032.
MAGNOLIA PETROLEUM COMPANY
v.
ARANSAS PASS CHANNEL & DOCK COMPANY ET AL.

Submitted September 23, 1914. Decided, June 14, 1915.

Wharfage charges collected by defendants on shipments of fuel oil in bulk received by complainant at Port Aransas, Tex., found to have been improperly assessed under tariff provisions held to be inapplicable. Reparation awarded.

G. C. Greer for complainant.

W. A. Scrivner for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complaint in this case attacks as unjust and unreasonable certain wharfage charges collected by the defendant, Aransas Pass Channel & Dock Company, hereinafter called the dock company, at Port Aransas, Tex., on import shipments of fuel oil in bulk to that port. It is alleged that the charges were collected under tariff provisions conceded by defendants to have been published by mistake. The defendants admit the allegations of the complaint relating to the charges in question and express willingness to pay reparation in the full amount of \$39,760.05 claimed.

Port Aransas is on Harbor Island, just off the coast of Texas, near Corpus Christi. In 1911 the complainant purchased a parcel of land on Mustang Island, just across the channel from Harbor Island, for the purpose of erecting tanks and other necessary facilities for receiving, storing, and forwarding oil. Shortly thereafter it was agreed between complainant and defendants that the facilities needed would be erected on Harbor Island, on land owned by the dock company, and that complainant should pay a certain rental for the land to be occupied thereby. This rental was to be based upon the quantity of oil unloaded from the boats into the tanks and amounts to about \$3,200 per year. Oil was to be transferred between deep-water vessels and complainant's tanks on Harbor Island by means of a pipe line, and no wharfage charges were to be made by the dock company. Tanks and other facilities were thereupon erected by the complainant on Harbor Island, and between the tanks

and a point accessible to oil vessels an underground pipe line was laid which passes under the wharf.

Early in 1914, after large quantities of imported fuel oil in bulk had been transferred from ship to tank by means of the pipe line under the terms of the agreement, complainant received notice from the dock company that through inadvertence an item had been included in its tariff providing for a wharfage charge of 3 cents per barrel of 50 gallons on fuel oil in bulk. Effective February 26, 1914, the tariff was amended by canceling the item which named this charge. Upon advice of its attorney, complainant paid wharfage charges at the rate named on all fuel oil imported to Port Aransas up to the date of the amendment. Shortly thereafter the dock company discovered that its tariff contained still another provision which, as interpreted by its traffic officials, imposed a wharfage charge of 1½ cents per 100 pounds on imported fuel oil. The tariff was then amended, as of March 12, 1914, so as effectually to preclude further wharfage charges on fuel oil in bulk. The complainant thereupon paid wharfage charges at the rate of 1½ cents per 100 pounds on all import shipments of fuel oil handled through the pipe line between the dates of the two amendments.

At the time the first charges were paid the wharfage tariff of the dock company contained the following provisions:

All vessels and their owners landing goods on the wharves thereby contract to pay and are responsible for the wharfage of the same according to the following rates:

WHARFAGE, INBOUND.

[Rates in cents per 100 pounds unless otherwise provided.]

Commodities:	Rate.
All articles not otherwise provided for below-----	1½
* * * * *	
Oil, fuel, in bulk, 50 gallons to be considered a barrel-----per barrel--	8
* * * * *	

There were over 25 articles on which inbound wharfage charges were named, with the general provision covering "all articles not otherwise provided for." By the first amendment the provision specifically naming fuel oil in bulk at a rate of 3 cents per barrel of 50 gallons was eliminated, but there was left in effect the item naming a charge of 1½ cents per 100 pounds on "all articles not otherwise provided for." By the second amendment this item was changed so as to exclude fuel oil in bulk from its operation.

It is to be observed that the tariff provided for wharfage charges against goods landed on the wharves. It contained no provision specifically embracing oil transferred from ship to tank through a pipe line.

The oil in question was imported from Mexico. It was testified at the hearing that the oil "came in from Mexico to Texas" through Port Aransas, and became "the property of the Magnolia Petroleum Company" when it was unloaded in Texas. It appears that considerable quantities of this oil were shipped by complainant from Port Aransas to El Paso, Tex., but such shipments had no direct connection with the import transportation. There is no evidence to show that when the oil left the foreign port there was any intention on the part of the shipper to send it by rail from the port of Port Aransas to El Paso, or to any other particular point in Texas or elsewhere. Contracts were made by complainant with a Mexican company for large quantities of fuel oil to be delivered to complainant at Texas ports, and wholly independent contracts were subsequently made with consumers to whom the oil was ultimately sold and to whom it was shipped from the Texas port. The shipments from the foreign port were to the port at Port Aransas, and so far as this record shows there was no definite ultimate destination in the mind of the shipper when the oil left Mexico. Therefore no question concerning different rates from the port to inland destinations or the relationship thereof on domestic and import traffic is here involved.

The oil in question was pumped from the vessel at Port Aransas through a pipe line constructed by the oil company to the storage tank, which was also constructed by the oil company. Complainant contends that as the oil was not landed on the wharf it was therefore not within the terms of the tariff. It appears of record that no wharfage or other service was performed by the dock company, and, as we have already pointed out, the tariff, while providing for charges on goods of various kinds landed on the wharves, including oil, contained no provision covering oil transferred from ship to tank through a pipe line.

It is our view and finding that the defendants' tariff provisions herein quoted were not applicable to the shipments in question, and that charges based thereon were improperly assessed and collected. An order will be entered awarding reparation to the complainant in the amount of \$39,760.05, which we find was improperly collected by and paid to the defendant, Aransas Pass Channel & Dock Company, with interest thereon at the rate of 6 per cent per annum from the date of collection.

While this complaint was brought jointly against the Aransas Pass Channel & Dock Company and the Aransas Harbor Terminal Railway Company, it appears of record that the latter company received no part of the payments made by complainant, and our order of reparation will therefore be directed only to the former.

No. 6309.
HASKEW LUMBER COMPANY
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

Submitted March 3, 1914. Decided June 17, 1915.

1. Rates on lumber from South Pittsburg, Tenn., to Ohio River crossings of 17 cents per 100 pounds, and to Mississippi River crossings of 22 cents, not shown to be unreasonable or unjustly discriminatory against South Pittsburg in favor of Chattanooga, Tenn.
2. The intention of the framers is not controlling with respect to the meaning of a tariff, which is to be construed according to its language. Upon interpretation of the tariff here in question, complainant found to have been overcharged on shipments which have been assessed charges in excess of 13 cents.

Finlay, Campbell & Coffey for complainant.

C. J. Rixey, jr., for Nashville, Chattanooga & St. Louis Railway and Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This is a complaint against rates on lumber from South Pittsburg, Tenn., to Ohio River and Mississippi River crossings. Violations of sections 1 and 3 of the act are alleged in that the rates are unreasonable in themselves and unjustly discriminatory against South Pittsburg. The rate charged from South Pittsburg to Ohio River crossings is 17 cents and to Mississippi River crossings 22 cents. It is alleged that these should not exceed 13 cents and 18 cents, respectively. A rate of 13 cents is applicable from Chattanooga. The complaint also involves a question of tariff construction. This latter phase of the case will be first considered.

The complainant, Haskew Lumber Company, is engaged in the business of manufacturing or sawing lumber, and selling the product in various states. Its plant is located at South Pittsburg, Tenn., on the Sequatchie Valley branch of the Nashville, Chattanooga & St. Louis Railway, which connects with the main line at Bridgeport, 5 miles distant. Bridgeport is 28 miles west of Chattanooga. South Pittsburg is, therefore, 33 miles from Chattanooga. Both Bridgeport and South Pittsburg are on the Tennessee River.

It appears that prior to 1913 complainant secured most of its logs from the Tennessee River, purchasing them chiefly up the river and floating them down to South Pittsburg. About the year 1901 or 1902 it made a large purchase of logs at the headwaters of the Tennessee, and at that time the rate from South Pittsburg to Ohio River crossings was 22 cents. At the instance of complainant the Chattanooga rate was then published from South Pittsburg to those crossings on "lumber sawn from logs from Chattanooga and beyond." This was to the interest of the defendant as well, in order to prevent the logs from being stopped and sawed at Chattanooga. Subsequently, in 1903 or 1904, a large sale of lumber was made by complainant to a Cincinnati firm. This lumber, which was in the yard at South Pittsburg, was sawed from logs drawn from the river, but not all from Chattanooga or beyond. This brought about a broadening of the scope of the tariff in the publication of the Chattanooga rate of 13 cents applicable to "lumber, when manufactured from logs drawn from the Tennessee River."

In 1909 the defendant published a tariff, naming a rate of 18 cents per 100 pounds from South Pittsburg, Tenn., to Ohio River crossings, on lumber (other than walnut, cherry, and cedar) and staves and heading (proportional rate when from Tennessee River landings between Chattanooga and Decatur). Also on logs drawn from Southern Railway stations, via Stevenson and Huntsville, Ala., or on logs drawn from Chattanooga and beyond, carload minimum weight 30,000 pounds.

In 1913 the tariff as amended read as follows:

Lumber (other than walnut, cherry, and cedar), staves, heading, and tan bark, carloads, when from Tennessee River landings, or when manufactured from logs drawn from Tennessee River landings.

Lumber (other than walnut, cherry, and cedar), staves, and heading brought into Bridgeport from or manufactured from logs brought into Bridgeport from Southern Railway stations via either Stevenson or Huntsville, Ala., or from Chattanooga, Tenn., and beyond.

In 1912 the river was closed by the erection of a lock and dam at Hales bar, a few miles above South Pittsburg, since which time complainant has purchased practically all of its logs inland and now brings them into South Pittsburg over the Nashville, Chattanooga & St. Louis Railway. This gave rise to the question of whether or not the necessary construction of the tariff restricted the 13-cent rate from South Pittsburg to lumber manufactured from logs drawn from the Tennessee River, or whether the proper interpretation extends the rate to lumber manufactured from logs drawn from inland. There can be no doubt that the intention of the defendant has always been to apply the tariff in its restricted sense.

This is shown by the fact that since 1901, when the 13-cent rate was published upon request of complainant, the defendant, in applying this rate, has always required evidence in the form of a statement in the bill of lading that the lumber tendered for shipment was manufactured from logs drawn from the Tennessee River. As heretofore stated, this was the practice continuously until 1913, when complainant began to draw logs from the interior by rail. However, it is a well-established rule that tariffs are to be construed according to their language, and the intention of the framers is not controlling. Its terms should be so clearly stated as to avoid misinterpretation or misunderstanding. Whereas prior to 1909 the tariff charges from South Pittsburg are stated in certain and definite terms, clearly indicating that the 13-cent rate is limited to lumber sawed from river logs, the subsequent issues are not so limited. The wording is such that the construction sought to be attached by complainant is the natural one. We find that under the tariff in question the rate lawfully applicable from South Pittsburg to Ohio River crossings on lumber manufactured from logs drawn from inland points on the Southern Railway via Stevenson and Huntsville, Ala., or from Chattanooga and beyond is 13 cents. We find that there have been overcharges on shipments which have been assessed charges in excess of that rate, for which overcharges refund is due the complainant. The case will be held open for such order as may be necessary in connection therewith.

Inasmuch as it is the avowed desire of defendant, in the event complainant's interpretation of the tariff is sustained, to make revision so as to indicate beyond question the application of rates as contended for by it, as has evidently been their intention heretofore, it is proper at this time to consider the rates in question.

Complainant contends that rates from South Pittsburg of 17 cents to Ohio River crossings and 22 cents to St. Louis, Mo., are unreasonable in that they exceed the rates of 13 cents and 18 cents, respectively, in effect from Chattanooga. It is stated that complainant must compete in the same markets with Chattanooga millmen and that the present difference in the rates gives an undue advantage to the Chattanooga competitors. It is further urged that as both Chattanooga and South Pittsburg are located on the Tennessee River there is between these points potential, if not actual, competition by water; that defendant would derive more revenue from the present traffic at the 13-cent rate than on lumber sawed from river logs, as it gets the haul on the logs into South Pittsburg and on the lumber outbound.

It appears that the rate of 13 cents from Chattanooga to Cincinnati, as typical of the Ohio River crossings, is a compelled rate as to the Nashville, Chattanooga & St. Louis. It was established by the

Cincinnati, New Orleans & Texas Pacific, which is the short line, 338 miles, and was met by the Nashville, Chattanooga & St. Louis to enable the latter to get a share of the business at Chattanooga. The haul via the latter road in connection with the Louisville & Nashville is approximately 450 miles. In adjusting its rates to the Ohio River from intermediate points defendant in most instances makes its through rates on lowest combination, basing on Chattanooga for points up to Estill Springs, which is about midway between Chattanooga and Nashville on the line of the Nashville, Chattanooga & St. Louis, and beyond Estill Springs basing on Nashville. The rate from Estill Springs to Cincinnati is 21 cents. The local rate from South Pittsburg to Chattanooga is 5½ cents, which makes the present through rate of 17 cents from South Pittsburg to the Ohio River crossings 1½ cents below the combination rate. The general adjustment of rates on lumber on the line of defendant is not here under attack, and there is nothing in the record to show whether or not such adjustment is reasonable, although the rate from South Pittsburg does not appear unreasonable when compared with rates to the Ohio River crossings from other points on the line of defendant.

Complainant alleges discrimination against South Pittsburg and in favor of Chattanooga in that on such commodities as stoves and hollow ware, dog irons, wash kettles, pipe, sadirons, and hosiery defendant makes practically the same rates from both points to the Ohio River crossings, the difference in some instances being in favor of South Pittsburg, while maintaining on lumber a difference of 4 cents in favor of Chattanooga. What compelling conditions brought about the present adjustment on the iron articles mentioned is not made clear, but admittedly there is no competition between such commodities and lumber. It is not clear, therefore, how this difference in rates may be held discriminatory.

In view of the circumstances and conditions appearing in this record, we do not find that the present rates on lumber from South Pittsburg to the Ohio River and Mississippi River crossings are unreasonable or unjustly discriminatory. Defendant will be expected to make any necessary revision of the wording of its tariff to avoid the possibility of misunderstanding or misinterpreting it.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 516.

CHARGES FOR TRANSPORTATION AND DISPOSAL OF
WASTE MATERIALS AT PITTSBURGH, PA., AND
OTHER CITIES.

Submitted May 7, 1915. Decided June 17, 1915.

Eleven carriers in Ohio, Pennsylvania, and West Virginia filed a tariff establishing or increasing charges for disposal of slag and other refuse. Upon protest of certain iron and steel mills the tariff was suspended pending investigation; *Held*, That the tariff does not comply with the requirements of the act to regulate commerce in that it fails to name destination points. It is therefore ordered stricken from the files.

A. P. Burgwin, T. H. Burgess, W. W. Collin, jr., W. A. Parker, and E. S. Ballard for respondents.

Charles MacVeagh, J. H. Read, C. A. Severance, and C. S. Belsterling for Carnegie Steel Company, American Sheet & Tin Plate Company, American Steel & Wire Company, and National Tube Company.

H. S. Endsley for Cambria Steel Company.

Wilson & Evans for Jones & Laughlin Steel Company.

Richard Jones, jr., for Republic Iron & Steel Company, Youngstown Sheet & Tube Company, Brier Hill Steel Company, and other protestants.

W. F. Morris, jr., J. M. Belleville, A. R. Kennedy, H. E. Graham, T. W. Friend, William Padden, R. B. Robinson, and W. H. Higgins for various parties.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

Eleven carriers operating in Ohio, Pennsylvania, and West Virginia have filed with this Commission a tariff containing charges for the disposal or so-called wasting of refuse material, which are named in the following items:

(1) These carriers will accept slag, flue dust, clean ashes, or refuse molding sand loaded into cars on private sidings of industries for wasting for the plant at a charge of 20 cents per net ton.

(2) These carriers will accept ashes (mixed with other refuse), brickbats, dirt, and other refuse material loaded into cars on private sidings of industries for wasting for the plant at a charge of 35 cents per net ton.

For many years it has been the custom of the carriers to dispose of the refuse material from the iron, steel, and tin-plate mills either free or for a charge which was generally 25 cents per net ton, according to the class of material, and upon the protest of the interested mills the carriers' tariff has been suspended.

While that tariff, if permitted to become effective, will fix the charge for disposal service for many different industries, the record in this case has dealt only with the disposal of the refuse from the iron and steel mills, and our inquiry must be correspondingly limited. By far the greater part of the refuse from the iron and steel mills is slag, a material which is the residue from the smelting of iron ore, and comes from the furnaces in a molten form. Originally it was the custom of the mills to run it while still molten into specially constructed cars, and in them move it to some unoccupied part of the plant inclosure and there dump it. But as the plants increased in size there was not only vastly more slag to be disposed of but less room within the plant in which to dump it, and it became necessary to find some way of getting it outside the plant. The mills then began to run the slag into trenches, where it was allowed to harden and afterwards broken up and turned over to the carriers. To-day, however, practically all of the slag is run direct from the furnaces into water-filled pits, in which it granulates and cools, and it is in this granulated form that the carriers now receive it. As has been said, the carriers have for a long time taken free all the slag which the mills gave them, and the reason was that it furnished a useful material, not only for the making of fills but for ballasting and subballasting their tracks. They still use large quantities of slag, but it is their contention that construction work has so decreased and the supply of slag given to them for disposal so greatly increased, having recently been 200,000 cars per annum, that the slag has become a burden to them, having even made it necessary for them to buy land on which to dump it. Therefore they can no longer afford to take it free, and propose to make the charge of 20 cents per net ton.

As to the contention that the slag is of value to the carriers and worth to them more than it costs, the carriers' denials and their proposed tariff charges for the disposal service must be final. We see no reason why this disposal service must be performed gratuitously by the carriers. We see no reason why, by the filing of appropriate tariffs and conforming with other requirements attending the business of common carriage, regular tariff charges for this service may not be filed, demanded, and collected. It is probable that a uniform charge for such service made by all carriers would be a barrier against any tendency to obtain tonnage indirectly through the free performance of this disposal service. But, on the other hand, it

appears to us evident that the tariffs under consideration in the instant case do not meet the requirements of section 6 of the act to regulate commerce. In a peculiar service of this type it might be a forced construction of the act to require the carriers to designate the specific points at which disposal is made of the slag in question. The tariff should, however, indicate that—

the carriers will receive carloads of refuse on any industrial or private sidetrack connected therewith, or on any team track, and will haul this refuse to some convenient point on its line or the line of a connecting carrier for wasting at a charge of — cents per net ton—

and such tariffs with a blanketed rate will be construed as complying with section 6, in so far as that section requires that tariff schedules “shall plainly state the places between which property and passengers will be carried.” It might be added that tariffs providing for this disposal service might be so phrased as to eliminate many of the uncertainties and perplexities which attach to the service under the tariff proposed. Among these uncertainties is the question of whether or not a definite consignment and bill of lading should be made; in whom title of the slag vests; and when and where transfer of such title, if any, is effected. Should these matters be provided for in appropriate tariffs they will have due consideration by the Commission. It is clear, however, that the tariffs as filed do not conform with section 6 of the act and must be ordered forthwith stricken from our files.

We desire to point out that should the respondent carriers engage in interstate transportation in connection with the disposal of slag they must have on file with this Commission lawful tariffs, naming their charges for such transportation. Should they even in connection with intrastate hauls use the free disposal of slag as a means of securing shipments from the steel and iron mills, or in any respect as a device to defeat any of the requirements of the act, they will be subject to prosecution for violation of the act to regulate commerce.

HALL, Commissioner, dissenting:

A common or public carrier is one who undertakes, for compensation, to transport personal property from one place to another, and there deliver the same, for all who may choose to employ him. The carriage of goods is a bailment on condition, express or implied, for carriage to their destination and delivery according to the directions of the consignor or owner. The carrier's undertaking is to deliver the goods transported as well as to carry safely. No obligation of the carrier is more rigorously enforced than that which requires delivery to the proper person.

It would seem that the carriage of the slag and other refuse lacks many of the attributes of transportation by a common carrier.

There is no contract either to carry safely or to deliver. There is no bailment. There is no consignor, properly speaking. There is no destination and no consignee. When would a shipment arrive? To whom should notice of arrival be sent? Where and to whom should delivery be made? The service to the industry ends when the slag leaves its premises. What becomes of it thereafter, or whether or not it crosses state lines in its subsequent movement, is a matter of utter indifference to the industry.

Contrast this with a situation where an industry, finding the available space for dumping within its plant grounds to have been exhausted, secures other dumping ground at a distance within or across state lines, and ships its slag and other refuse from the plant to that ground. Here the service by the railway is one of common carriage, of transportation within the meaning of the act. It is quite as incumbent upon the industry to provide for itself such dumping ground outside its plant, when the space within has been exhausted, as it was to provide such ground within the plant when making its original installation.

The removal, as here proposed, of slag and other refuse from plants which it encumbers is a service of value to the owner of the premises. A common carrier may perform this service, if it so elects, unless beyond its chartered powers, and may claim and collect reasonable compensation therefor.

But in performing this service it does not act as a common carrier engaged in transportation of property for others within the meaning of the act to regulate commerce. It performs a private service of wastage analogous to that of a wrecker or scavenger, for which its instrumentalities and facilities for shipment are physically adapted, and unless and until its use of those instrumentalities for that service impairs its readiness and ability to perform the service of common carriage for which it exists, or amounts to a violation or evasion of its obligations under the law, neither the act to regulate commerce nor the powers thereby conferred upon the Commission can be invoked to restrain or regulate the performance of that service. But being a common carrier engaged contemporaneously in performing a public service in interstate commerce, of which the industries in question may avail themselves in common with the rest of the public, it may not make this private service of wastage a means of circumventing the act, of preferring one member of the public to another, of accord- ing any undue advantage to one, or of inflicting any undue disadvantage upon another. It is not made to appear that the tariff filed offends in any of these ways.

For the reasons stated I am unable to concur in the majority report.

No. 6628.
MERCHANTS EXCHANGE OF ST. LOUIS, MO.,
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

No. 6662.
SOUTHWESTERN MISSOURI MILLERS' CLUB
v.
CHICAGO & ALTON RAILROAD COMPANY ET AL.

Submitted January 8, 1915. Decided June 14, 1915.

The intrastate rates from interior Missouri points to St. Louis, Mo., are lower than the interstate rates for the same movement applicable on through shipments. In Docket 6628 complainant attacks as unreasonable the requirement of central freight association and trunk line carriers that expense bills showing the payment of interstate rates inbound be surrendered in order to secure the reshipping rates outbound. The complainant in Docket 6662 alleges unjust discrimination because the combination of intrastate rates to St. Louis and outbound rates to central freight association, trunk line, southeastern, Mississippi Valley, and southwestern territories of which St. Louis shippers are able to avail themselves is lower than the rates for the through movement from interior Missouri points;
Held:

1. In the absence of local or flat rates from St. Louis proper shipments of grain and grain products are entitled to move out on reshipping rates "regardless of the point of origin of the grain and regardless of the rate paid on the inbound shipment" because "we must so construe the tariffs as to permit the traffic to move, if that be possible." Decision in *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 30 I. C. C., 700, 702, reaffirmed.
2. By maintaining interstate rates higher than the intrastate rates from interior Missouri points to St. Louis an unlawful and undue prejudice and advantage is given to St. Louis and an unjust and unlawful discrimination is effected against the interior Missouri and southern Illinois points and East St. Louis from which carriers serving St. Louis from the west are ordered to cease and desist.
3. The record is not sufficient to justify a determination as to the reasonableness of the present interstate rates from interior Missouri points to St. Louis. No change should be made without due consideration of the relation of the rates to and from St. Louis with the rates to and from Memphis.
4. While reshipping or proportional rates are applicable to part of a through but suspended movement from point of origin to ultimate destination, outbound local rates, although they may likewise apply to part of a through movement, can not be limited according to the point of origin of the shipment or the rates which were paid inbound. So long as there are intrastate rates published to St. Louis shippers can not be denied the right to avail themselves of these rates for movements which are clearly intrastate, and so long as there are flat rates published out of St. Louis shippers must be permitted, in proper cases, to ship out-

- bound under these rates irrespective of the rates paid inbound. It is plain that the intrastate movement to St. Louis must be considered as a separate movement which can not be tied up to the outbound movement in such a manner as to constitute the two one through movement, provided the consignee has in good faith taken possession. *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403; *Chicago, Milwaukee & St. Paul Ry. Co. v. Iowa*, 233 U. S., 334.
5. Absorption of elevation charges is made upon the theory that the inbound and outbound movements comprise a through movement and that the grain has been elevated in transit. Whenever the absorption is made the grain can not lawfully move forward except at the balance of the through rate.

Charles Rippin for Merchants Exchange of St. Louis.

W. H. Marshall for Southwestern Missouri Millers' Club.

N. S. Brown for Wabash Railroad Company and receivers thereof, and defendant carriers in Docket Nos. 6628 and 6622.

L. J. Hackney, W. W. Collin, jr., and W. Nichols for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Edward Barton, E. C. Kramer, and B. A. Candell for Baltimore & Ohio Southwestern Railroad Company.

H. G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Thomas Bond for St. Louis & San Francisco Railway Company and receivers thereof.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

J. M. Bryson, J. W. Jamison, and R. D. Williams for Missouri, Kansas & Texas Railway Company.

A. P. Humburg and F. H. Law, for Illinois Central Railroad Company.

P. C. Kramer, N. S. Brown, W. W. Collin, jr., and C. B. Cardy for defendants in Docket 6628.

C. B. Sudborough for Pennsylvania Company; Pennsylvania Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and Vandalia Railroad Company.

C. W. Galligan for Chicago & Alton Railroad Company.

P. P. Rainer and H. H. Burnstein for Joint Rate Inspection Bureau.

C. B. Bee for Public Service Commission of Missouri.

W. O. Bartholomew for Southern Illinois Millers' Association.

C. B. Stafford for Memphis Merchants Exchange.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

These complaints are occasioned by the establishment of lower intrastate rates on grain and flour from interior Missouri points to St. Louis, Mo., than the proportion of interstate rates for the same movement applicable on through shipments. In Docket No. 6628 a preliminary report was rendered on June 27, 1914, *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 30 I. C. C., 700. The underlying

question was the same as that presented in Docket No. 6662, the Southwestern Missouri Millers' Club against the Chicago & Alton Railroad Company, and the former was therefore consolidated with the latter and set for further hearing.

So long as there had been but one set of rates inbound and one set of rates outbound applicable on shipments to and from St. Louis and East St. Louis, the surrender of inbound expense bills upon making shipments outbound was superfluous, and consequently the policing of grain shipments at St. Louis had been discontinued. Although in some instances the outbound rates were named as reshipping or proportional rates applicable on grain or its products coming from beyond, and although the class rates, or in some instances flat commodity rates, may have been the correct rates to apply to a strictly local movement from St. Louis, the reshipping or proportional rates were universally applied upon all grain or grain products moving from St. Louis, since it was recognized that practically all grain moving from St. Louis comes from beyond. However, when the rates prescribed by the legislature of Missouri became effective on June 12, 1913, the old rates remained in effect on interstate shipments, and the question at once arose as to which rates were properly applicable for the movement of grain to St. Louis and as to whether it was proper to apply the same rates outbound on grain which had moved inbound under the intrastate rates as upon that which had moved in under the interstate rates.

Rates on grain and grain products from points west to destinations east of the Mississippi River are made on the Mississippi River crossings. With the exception of rates from near-by points the interstate rates from Missouri points are, and for some time have been, the same to St. Louis and East St. Louis. The rates from St. Louis and East St. Louis to destinations east and south are likewise the same. It is not disputed that the rates for the through movement should be made by combination of the interstate rates to St. Louis and the reshipping rates beyond.

However, most of the grain which comes to St. Louis is not billed through to destinations beyond but to consignees at St. Louis, by whom it is sold on the grain exchange. It frequently changes hands several times. The purchaser may take constructive possession of the grain and reship it without unloading, or, as frequently happens, may store it in elevators or mill it into flour before finally shipping it on. It is in connection with such shipments that the question of the proper rate to apply arose.

By a regulation made effective January 10, 1914, the carriers leading from St. Louis and East St. Louis to central freight association and trunk line territories refused to apply the reshipping rates

from St. Louis to points in those territories except upon surrender of inbound expense bills showing that the grain had moved to St. Louis at the interstate rate or else upon payment of the difference between the intrastate and the interstate rate to St. Louis. In Docket 6628 the Merchants Exchange of St. Louis attacks this regulation as unreasonable.

The carriers leading from St. Louis and East St. Louis to southeastern, Mississippi Valley, and southwestern territories do not require the surrender of inbound expense bills showing the payment of interstate rates, but allow shipments to be made on the rates regularly applied for shipments to points in those territories. As a general rule, the rates from St. Louis to southeastern, Mississippi Valley, and southwestern territories are not published as proportional or reshipping rates, but apply from St. Louis proper as well as on grain coming from beyond.

In its complaint in Docket No. 6662 the Southwestern Missouri Millers' Club alleges that the millers at interior Missouri milling points are unduly discriminated against by reason of the fact that the combination of the state rates to St. Louis and the rates to points in central freight association, trunk line, southeastern, Mississippi Valley, and southwestern territories is lower than the rate for the through movement from interior Missouri points to the same destinations. The Merchants Exchange of St. Louis, the Southern Illinois Millers' Association, the Memphis Merchants Exchange, and the Public Service Commission of Missouri intervened. There is little dispute as to the facts involved. All parties are agreed that the existing situation is intolerable.

The Missouri intrastate rates are from one-half to 6 cents per 100 pounds lower than the interstate rates for the same movement applicable on through shipments. This difference represents the advantage of St. Louis millers and grain dealers over their competitors at interior Missouri points in all cases where the rates for the through movement from point of origin to ultimate destination make on St. Louis or East St. Louis, granting that rates charged for the movement beyond St. Louis be the same irrespective of the rate charged inbound. St. Louis would enjoy this advantage in the movement of grain from all points in Missouri to all points in central freight association and trunk line territories, and from points in northern Missouri to destinations in southeastern, Mississippi Valley, and southwestern territories, in all of which cases the through rates make on St. Louis. In the following table a comparison is made of the interstate and the intrastate rates on wheat and corn

to St. Louis from a number of typical interior Missouri points. Rates are stated per 100 pounds:

From—	Carrier.	Dis- tance.	Wheat.			Corn.		
			Inter- state.	State.	Differ- ence.	Inter- state.	State.	Differ- ence.
		Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Carrollton.....	Wabash.....	211	11½	9	2½	10½	9	1½
Glasgow.....	C. & A. and Wabash ..	183	11½	8	3½	10	8	2
Maryville.....	Wabash.....	318	11½	11	½	10½	11	— ½
Chillicothe.....	do.....	225	11	9	2	10	9	1
Mexico.....	do.....	110	9½	7	2½	8½	7	1½
Kirksville.....	do.....	204	10½	9	1½	9	9	0
Boonville.....	M., K. & T.....	192	12	8½	3½	10	8½	1½
Harrisonville.....	M. P.....	253	16	10	6	14	10	4
Clinton.....	M., K. & T.....	267	16	10	6	14	10	4
Sedalia.....	M. P.....	188	14	8½	5½	12	8½	3½
Sweet Springs.....	do.....	211	14	9	5	13	9	4
Lamar.....	St. L. & S. F.....	302	16	11	5	14½	11	3½
Necaho.....	do.....	310	16	11	5	14½	11	3½
Joplin.....	do.....	332	16	11½	4½	14½	11½	3
Springfield.....	do.....	238	15½	9½	6	13½	9½	4
West Plains.....	do.....	320	17	11	6	15	11	4
Sixteen.....	do.....	166	10	8	2	10	8	2

¹ Established Dec. 1, 1914; an advance of 1 cent over former rates.

The difference between the state and the interstate rate inbound represents the advantage of St. Louis if permitted to use the intra-state rates inbound and the reshipping rates outbound in the movement of wheat or flour from all of the interior Missouri points named to all destinations east of St. Louis and also in the movement to the south from the first seven points named which are located in northern Missouri and from which the through rates to the south make over St. Louis. If this combination were permitted, St. Louis would enjoy a like advantage over East St. Louis and also over mills in southern Illinois located on the direct routes to the east or the south, which are permitted to mill in transit at the rate from East St. Louis plus a milling-in-transit charge of one-half cent per 100 pounds.

Rates to the southeast and the Mississippi Valley are generally made by combination on Memphis from central Missouri points, and are always so made from Southern Missouri. The effect the establishment of the comparatively low intrastate rates to St. Louis has upon rates from central and southern Missouri to the southeast and the Mississippi Valley is illustrated by the following table of rates per 100 pounds on wheat and corn:

Rates and distances from interior Missouri points to destinations in southeastern and Mississippi Valley territories via Memphis compared with combinations via St. Louis.

From—	To—	Distances.		Rates on wheat.			Rates on corn.		
		Via Mem-phis.	Via St. Louis.	Via Mem-phis (com-bina-tion).	Inter-state rate to St. Louis plus rate beyond.	State rate to St. Louis plus rate beyond.	Via Mem-phis (com-bina-tion).	Inter-state rate to St. Louis plus rate beyond.	State rate to St. Louis plus rate beyond.
		Miles.	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Sedalia.....	Atlanta, Ga..	845	790	38	30	34½	37	30	34½
Springfield ¹..	.....do.....	609	849	37	41½	35½	33	30½	36½
Clever.....	Chattanooga, Tenn.	613	730	34	30	33	32	37	38
Neosho ¹.....	.....do.....	666	790	36	30	34	34	37½	34
Clinton ¹	Birmingham, Ala.	630	749	36	40	34	35	38	34
West Plains..	.....do.....	421	805	35	41	35	33	30	35
Sedalia.....	Tupelo, Miss.	533	560	32½	33½	29	29½	29	30½
Springfield ¹..	.....do.....	387	616	31½	36	30	27½	31½	27½

¹ Proportional rates to Memphis of 14 cents on wheat and products and 13 cents on corn coming from beyond are maintained from these points by the St. Louis & San Francisco Railroad, which, in combination with the rates beyond, produce the following through rates via Memphis: To Atlanta, wheat 34 cents, corn 33 cents; to Chattanooga, wheat 31 cents, corn 30 cents; to Birmingham, wheat 33 cents, corn 31 cents; to Tupelo, wheat 28½ cents, corn 25½ cents.

² On wheat to St. Louis and flour beyond; on wheat through to Tupelo, 3 cents higher.

From this table it will be seen that in many cases the distances to points in the southeast and the Mississippi Valley are much shorter via Memphis than via St. Louis and that although the combinations of the interstate rates on St. Louis are higher than the combinations on Memphis, the intrastate rates to St. Louis plus the rates beyond make lower combinations than the rates based on Memphis. The low intrastate rates give an advantage to the circuitous route via St. Louis, of which only the St. Louis merchant or miller is able to avail himself. The Memphis Grain Exchange also calls attention to the fact that the intrastate rates to St. Louis have disturbed the relation between rates through St. Louis and through Memphis. It is urged by Memphis that any change made in the rate through St. Louis should be reflected in corresponding changes in the Memphis rates.

Specific rates are published from central and southern Missouri points to Louisiana, Texas, and Arkansas destinations which are with some exceptions less than the combination of the intrastate rate to St. Louis and the rate beyond. However, as previously stated, from northern Missouri where the rates for the through movement base on St. Louis, interior points are at a disadvantage as compared with St. Louis. Furthermore, since the establishment of the intrastate rates, millers located in southern Missouri have been restricted in the territory from which they can draw grain, the product of which is to be sent to the southwest. In *Southwestern*

Missouri Millers Club v. M., K. & T. Ry. Co., 22 I. C. C., 422, the Commission found that the rates on grain and grain products from the Joplin, Mo., group to the Alexandria, La., and Little Rock, Ark., groups were "too high both of themselves and in comparison with similar rates from southern Illinois and from the northern part of the Kansas City group." In order to properly adjust the relation between rates from southern Missouri and from points farther north, the Commission ordered the rates in question reduced 2½ cents. It is argued that St. Louis shippers are able to circumvent this order by using the state rates inbound from central and northern Missouri and thus effecting a combination to Little Rock and other Arkansas points in many cases lower than the direct rates from southern Missouri points.

It is apparent that by reason of the lower intrastate rates to St. Louis, millers and grain dealers in interior Missouri, East St. Louis, and southern Illinois are at a rate disadvantage as compared with St. Louis in the movement of Missouri grain and grain products to central freight association, trunk line, southeastern, Mississippi Valley, and southwestern territories. However, St. Louis also complains of this situation.

Reference has already been made to the complaint of the Merchants Exchange of St. Louis in Docket No. 6628 against the requirement of central freight association and trunk line carriers that expense bills showing the payment of interstate rates inbound be surrendered in order to secure the reshipping rates outbound. In its preliminary report, *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 30 I. C. C., 700, 702, the Commission said:

It appears from an examination of the tariffs on file with the Commission that while the tariff carrying class rates to central freight association territory excludes from its operation grain and grain products, that is not true as to the tariff carrying class rates to trunk line territory, and that those class rates do apply to grain and grain products. We are inclined to think, therefore, that the regulation complained of is reasonable as applying to shipments to trunk line territory, as it is necessary to know the point of origin of the shipment in order to determine whether the reshipping commodity rate applying to shipments "from beyond" should be applied, or the local or flat class rate. As to shipments to central freight association territory, however, the case is different, and we are inclined to think that the shipments of grain and grain products to that territory are entitled to move out on the reshipping rate, regardless of the point of origin of the grain and regardless of the rate paid on the inbound shipment, there being no other rate on which such shipments could move to that territory. We are inclined to that opinion because it is admitted that the rate was originally published for the purpose of making the point of origin immaterial and to dispense with the necessity of surrendering expense bills, and we must so construe the tariffs as to permit the traffic to move, if that be possible.

Upon the present record we reaffirm the above finding.

84 I. C. C.

Subsequent to the issuance of that report, defendants attached a definite provision to the reshipping rates on grain and grain products from St. Louis to central freight association and trunk line territories, requiring the surrender of expense bills showing the payment of interstate rates for inbound movements and published local commodity rates on grain and grain products a little higher than reshipping rates which were to be applied in case the shipper failed to surrender such inbound billing. On behalf of St. Louis, it is contended that defendants' action has practically destroyed the Missouri wheat business from St. Louis to central freight association and trunk line territories by placing Missouri wheat at a rate disadvantage that makes it impossible for St. Louis dealers to compete with shipments from other points, primarily Chicago. The rates on grain and grain products from Kansas, Nebraska, Oklahoma, and southern Iowa are generally 3 cents per 100 pounds higher to Chicago than to St. Louis, and normally this difference fixes the relative value of grain at Chicago over St. Louis. Therefore, in order to permit competition with Chicago, the St. Louis rates to points in central freight association and trunk line territories must not be more than 3 cents higher than the rates from Chicago to the same points. It is asserted that although the intrastate rates from Missouri points to St. Louis are more than 3 cents below the rates from the same points to Chicago, this has produced no change in the relative value of Missouri grain in the St. Louis and Chicago markets, but that the great bulk of grain coming from the other states has continued to fix the price at St. Louis 3 cents per 100 pounds below the Chicago price. Consequently when on Missouri grain the relationship of 3 cents over Chicago ceased to be observed in the outbound rates, St. Louis was unable to sell that grain or its product in central freight association and trunk line territories in competition with Chicago.

Although the tariff regulations imposed upon their reshipping rates by the central freight association and trunk line carriers handicapped St. Louis in competing with Chicago in central freight association and trunk line territories, they did not remove the discrimination in favor of St. Louis and against interior Missouri, East St. Louis, and southern Illinois points. The following table shows the advantage which St. Louis still enjoys over interior Missouri points, East St. Louis, or points in southern Illinois.

Rates per 100 pounds on wheat and grain products for through movement compared with combination on St. Louis.

From—	To—	Commodity.	Through move- ment.			Combination on St. Louis.			Difference combination below through rate.
			Interstate rate to St. Louis.	Reshipping rate from St. Louis.	Total.	Intrastate rate to St. Louis.	Local rate from St. Louis. ¹	Total.	
Carrollton, Mo.....	Indianapolis, Ind..	Wheat.....	Cts. 11.5	Cts. 6.8	Cts. 18.3	Cts. 9.0	Cts. 9.0	Cts. 18.0	Cts. 0.3
Do.....	do.....	Grain products.	11.5	9.0	20.5	9.0	9.0	18.0	2.5
Glasgow, Mo.....	Cincinnati, Ohio..	Wheat.....	11.5	7.9	19.4	8.0	11.0	19.0	.4
Do.....	do.....	Grain products.	11.5	11.0	22.5	8.0	11.0	19.0	3.5
Chillicothe, Mo.....	Columbus, Ohio....	Wheat.....	11.0	10.4	21.4	9.0	11.5	20.5	.9
Do.....	do.....	Grain products.	11.0	11.5	22.5	9.0	11.5	20.5	2.0
Kirksville, Mo.....	Cleveland, Ohio....	Wheat.....	10.5	10.4	20.9	9.0	12.5	21.5	+ .6
Do.....	do.....	Grain products.	10.5	12.5	23.0	9.0	12.5	21.5	1.5
Clinton, Mo.....	Detroit, Mich.....	Wheat.....	16.0	9.3	25.3	10.0	11.5	21.5	3.8
Do.....	do.....	Grain products.	16.0	11.5	27.5	10.0	11.5	21.5	6.0
Sedalia, Mo.....	Pittsburgh, Pa.....	Wheat.....	14.0	13.5	27.5	8.5	17.0	25.5	2.0
Do.....	do.....	Grain products.	14.0	17.5	31.5	8.5	17.5	26.0	5.5
Sweet Springs, Mo..	Baltimore, Md.....	Wheat.....	14.0	16.8	30.8	9.0	20.8	29.8	1.0
Do.....	do.....	Grain products.	14.0	17.5	31.5	9.0	21.5	30.5	1.0
Neosho, Mo.....	Philadelphia, Pa...	Wheat.....	16.0	17.8	33.8	11.0	21.8	32.8	1.0
Do.....	do.....	Grain products.	16.0	18.5	34.5	11.0	22.5	33.5	1.0
Joplin, Mo.....	New York, N. Y....	Wheat.....	16.0	19.8	35.8	11.5	23.8	35.3	.5
Do.....	do.....	Grain products.	16.0	20.5	36.5	11.5	24.5	36.0	.5
Springfield, Mo....	Boston, Mass.....	Wheat.....	15.5	21.8	37.3	9.5	25.8	35.3	2.0
Do.....	do.....	Grain products.	15.5	22.5	38.0	9.5	26.5	36.0	2.0
West Plains, Mo....	Syracuse, N. Y....	Wheat.....	17.0	16.8	33.8	11.0	20.8	31.8	2.0
Do.....	do.....	Grain products.	17.0	17.5	34.5	11.0	21.5	32.5	2.0

¹ The local rates given were published in agent Cameron's tariffs I. C. C. Nos. D 66, supplement 13, and D 70, supplement 58, effective Nov. 16 and Dec. 1, 1914, respectively. Local rates were first published to central freight association and trunk line territories effective Sept. 8, 1914, on a slightly higher basis.

² Established Dec. 1, 1914; an advance of 1 cent over former rates.

It will be observed that there is no difference between the local and the reshipping rates on grain products from St. Louis to central freight association and western termini points. Consequently in the movement of Missouri grain to these destinations the St. Louis miller enjoys a preference over his interior Missouri, East St. Louis, or southern Illinois competitor to the full extent of the difference between the interstate and intrastate rates to St. Louis. On wheat the difference between the local and the proportional rates from St. Louis to central freight association and western termini points varies, averaging about 2 cents per 100 pounds. On wheat and grain products the difference between the local and the proportional rates to trunk line points is uniformly 4 cents. It is obvious that wherever the difference between the inbound interstate and intrastate rates to St. Louis exceeds the difference between the local and the reshipping rates outbound the St. Louis miller or dealer enjoys an advantage over his interior Missouri, East St. Louis, or southern Illinois competitor. The carriers did not consider that this situation could justify local rates from St. Louis to central freight association and trunk line territories which would take up the entire slack between the intrastate and the interstate rates from interior Missouri points to St. Louis.

The Southern Missouri Millers Club proposes in its complaint in Docket 6662 that the discrimination against interior Missouri millers be removed by establishing joint rates and through routes from all points west of St. Louis to all points east of St. Louis, or by regarding the present interstate rates to St. Louis plus the rates beyond as through rates, and permitting shipments to be forwarded from St. Louis only at the balance of the through rate. This plan would require strict policing of all the grain and grain products passing through or shipped out of St. Louis. The surrender of inbound expense bills would be required not only in case of outbound shipments under the reshipping rates to central freight association and trunk line territories, but also in case of shipments made at the local rates to these territories or the flat rates prevailing to the southeast, the Mississippi Valley, or the southwest. In the event of a shipment in at the intrastate rate and out at a local rate the difference between the interstate and the intrastate rates inbound would either be collected at the time or would be billed forward as advanced charges. The local rates would be considered part of the through rates just as much as the reshipping rates would be, and in no instance could the movement in and the movement out be dissociated.

The first objection to this plan is that the outbound rate would vary with the point of origin. In *Southern Illinois Millers' Assn. v. L. & N. R. R. Co.*, 23 I. C. C., 672, 675, the complainant also urged that the entire through rate should be published from each point of origin to final destination, and that elevation or milling should be allowed at all points en route alike. Regarding this proposal the Commission said:

Such was the original plan. Grain might move from the field to the east through St. Louis, for example, from many points of origin with the right to mill or elevate at St. Louis. Under this system the grain paid a certain rate into St. Louis and what was known as the balance of the through rate when it went forward. Since the division of this through rate which was allowed to lines east of St. Louis varied with the point of origin, it resulted that the balance of the through rate differed, and this presented opportunity for manipulation of billing. In a market like St. Louis, where there is a large local consumption and where, therefore, surplus billing to a considerable amount could always be had, it was possible by the crossing of billing, by selecting of the most favorable billing, and by other practices, to defeat the through rate so that this system, while in theory entirely just, was in its working filled with iniquity. To prevent discriminations arising from these methods the Commission has long believed that when conditions admit rates should be established from these larger grain markets applicable to all grain handled at and shipped from the market, irrespective of its point of origin, and the rates before us were established by the carriers in that view.

The plan of the Southern Missouri Millers Club is open to the further objection that it is based upon a hypothesis which the law will not permit, namely, that it is possible to deny the right to make two separate and dissociated shipments of the same commodity, the one

at a local rate in and the other at a local rate out of St. Louis. While reshipping or proportional rates should in all cases be regarded as applicable only for part of a through but suspended movement from point of origin to ultimate destination, local rates, although they may likewise apply to part of a through movement, can not be limited according to the point of origin of the shipment or the rates which were paid inbound. So long as there are intrastate rates published to St. Louis shippers can not be denied the right to avail themselves of these rates for movements which are clearly intrastate, and so long as there are flat rates published out of St. Louis, shippers must be permitted, if they have in the meantime in good faith taken possession, to ship outbound under these rates irrespective of the rates paid inbound. In reaching this determination, we do not lose sight of the fact that as practically all grain shipped from St. Louis comes from points beyond, all of the outbound rates, local as well as reshipping or proportional, are in one sense divisions of the through rates from the point of production to the ultimate destination. *Southern Illinois Millers Asso. v. L. & N. R. R. Co.*, 23 I. C. C., 672, 674; *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596. In fixing the measure of the local rates from St. Louis this has probably in most instances been taken into consideration. But it obviously would be unjust to require that all outbound rates be restricted to shipments coming from beyond St. Louis, leaving no rates from St. Louis proper. St. Louis has a right to reasonable outbound rates on all commodities to which the reshipping rates do not apply. This was recognized by the Commission in its preliminary report in Docket 6628, *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 30 I. C. C., 700, 702, where it held that, in the absence of local or flat rates from St. Louis proper, shipments of grain and grain products are entitled to move out on the reshipping rates to central freight association territory "regardless of the point of origin of the grain and regardless of the rate paid on the inbound shipment" because "we must so construe the tariffs as to permit the traffic to move, if that be possible."

All the carriers leading from St. Louis provide for the absorption of elevation charges of one-fourth cent per bushel on outbound shipments of grain that has been stored in elevators at St. Louis. This absorption is made on the theory that the inbound and outbound movements comprise a through movement and that the grain has been elevated in transit. Whenever the absorption is made the grain can not lawfully move forward except at the balance of the through rate. It would, however, be to the shipper's advantage in certain cases to refuse the elevation allowances and insist that his grain move forward as a purely local shipment. There is nothing to pre-

vent the miller at St. Louis from making inbound and outbound local shipments entirely dissociated from each other.

This position is supported by several recent decisions of the Supreme Court of the United States. In *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403, the question before the court was whether a shipment of two cars of corn from Texarkana to Goldthwaite, Tex., was part of an interstate movement or merely intrastate. This corn originated at Hudson, S. Dak. During the transportation from Hudson to Texarkana the Harroun Commission Company, the shipper, made a contract for the sale of the corn to be delivered to the Hardin Grain Company at Texarkana. The Hardin Grain Company had perviously contracted to deliver two cars of corn to Saylor & Burnett at Goldthwaite and upon receipt at Texarkana of the corn shipped from Hudson, reshipped it under a new bill of lading from Texarkana to Goldthwaite without unloading. The officers of the Hardin Grain Company admitted that the reason why they contracted for the corn to be delivered to them at Texarkana was because they could fill their contract with Saylor & Burnett at Goldthwaite at about 1½ cents per bushel cheaper than they could if they bought the corn for delivery at Kansas City and had it shipped from Kansas City to Goldthwaite.

The court held that the shipment from Texarkana to Goldthwaite was intrastate. In *Texas & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111, the court, in discussing the *Texas case, supra*, states that the determining facts in that case were that the contract between the Hardin Grain Company and the Harroun Commission Company was completed in accordance with its terms when the corn was delivered to the Hardin Company at Texarkana; that until the first contract of transportation had been completed, the Hardin Company did not have full title to and control of the corn, and that not till then had the Hardin Company acquired the means of fulfilling or started to fulfill its contract with Saylor & Burnett; that the Hardin Company was under no obligation to ship the corn beyond Texarkana, and could in any other way it saw fit have provided corn for delivery to Saylor & Burnett.

In the *Sabine case, supra*, the Supreme Court held that shipments of lumber from Ruliff, Tex., to Sabine, Tex., although on local bills of lading, were foreign and not intrastate commerce. On page 126 of the opinion the court said:

* * * The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various char-

acter by the steps in its transportation would be extremely artificial. Once admit the principle and means will be afforded of evading the national control of foreign commerce from points in the interior of a state. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign.

In *Chicago, Milwaukee & St. Paul Ry. Co. v. Iowa*, 233 U. S., 334, coal shipments were involved which were shipped to Davenport interstate and later forwarded intrastate to other points in Iowa without unloading. The United States Supreme Court declared that it was unable to say upon the record that the Iowa state court had improperly characterized the shipments from Davenport to Iowa points as intrastate, and in this connection said, at page 343:

* * * the fact that commodities received on interstate shipments are reshipped by the consignees in the cars in which they are received to other points of destination does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same state from having an independent and intrastate character. *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403; *Ohio Railroad Commission v. Worthington*, 225 U. S., 101, 109; *Texas & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111, 129, 130.

The testimony shows that when shipments of grain are made to St. Louis there is no certainty of their going beyond to points in other states. The grain may be used locally in its original form, or after having been converted into flour, or the flour or other grain product may be reshipped to points in Missouri. Most of the grain coming to St. Louis is shipped to commission merchants to be sold on the grain exchange. The consignor pays the freight charges. It is not sold until it reaches St. Louis. The purchaser does not gain control over it and is not in a position to forward it in interstate commerce until the intrastate movement has been completed. And even when he gains control over the grain he frequently does not reship immediately, but first stores it in elevators or mills it into flour. Clearly the present case is within the Supreme Court decisions referred to above, and it is plain that the intrastate movement to St. Louis must be considered as a separate movement which can not be tied up to the outbound movement in such a manner as to constitute the two one through movement, provided the consignee has in good faith taken possession. Consequently we are unable to find the solution of the present difficulty in the manner suggested by the Southern Missouri Millers Club.

However, while St. Louis shippers can not be denied the benefit of the intrastate rates to St. Louis so long as they are in force, that does not preclude a finding that the intrastate rates effect an unjust discrimination against interstate traffic.

Upon the original hearing in Docket 6628, the Merchants Exchange of St. Louis took the position that St. Louis shippers should be permitted to move grain inbound at the intrastate rates and outbound at the reshipping rates. Upon the rehearing and upon the final argument its position was that there should be established one set of rates inbound and one set outbound.

Neither the Merchants Exchange of St. Louis nor the Southwestern Missouri Millers' Club insist upon the use of the intrastate rates to St. Louis. Both are interested in the relation rather than the measure of the rates, as are likewise the interveners, the Southern Illinois Millers' Association and the Memphis Grain Exchange. Nor did the Public Service Commission of Missouri attempt to defend the intrastate rates in so far as they may be used in interstate commerce. The rate expert who represented the Missouri commission upon the hearing testified as follows:

The schedule of rates as they apply on grain, with nothing else considered, is not, in my opinion, a reasonable schedule of rates, because I think, in the distances above 150 miles especially, the rate is a little thin. But when it is considered in connection with the high plane of the class rates applicable between points in the state of Missouri, together with the fact that schedule of rates does not apply in connection with the transit, and does not carry any by-products with it, * * * makes it a much higher schedule of rates than should be applied. * * *

I think the discrimination or the unreasonableness in the Missouri rate comes in the fact that it arbitrarily adds one-half cent for 25 miles.

The alleged "high plane of the class rates" can not be taken into consideration in determining the reasonableness of rates on grain and grain products. *Northern Pacific Ry. v. North Dakota*, 236 U. S., 585. Furthermore, although the Missouri intrastate rates on grain and grain products do not provide for milling in transit or like practices permitted in connection with the interstate rates, the shippers located in St. Louis at the rate-breaking point are not affected by these restrictions. The advantage of permitting the rates to break at St. Louis and of having one set inbound and one set outbound, thus obviating the necessity for canceling inbound billing on outbound shipments, is clearly set forth in *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, *supra*, and *Southwestern Shippers Traffic Asso. v. A., T. & S. F. Ry. Co.*, *supra*.

The following table shows a comparison of the Missouri intrastate rates per 100 pounds on grain and grain products with the rates prescribed by the state authorities in Illinois, Iowa, Nebraska, and Kansas:

State rates on wheat, flour, and corn compared.

Miles.	Wheat and flour.					Corn.				
	Missouri.	Illinois.	Iowa.	Nebraska.	Kansas.	Missouri.	Illinois.	Iowa.	Nebraska.	Kansas.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
5.....	5.0	3.6	4.5	4.25	4.0	5.0	3.3	3.7	4.25	3.5
15.....	5.0	4.4	4.9	4.25	4.5	5.0	3.9	4.1	4.25	4.0
25.....	5.0	4.9	5.3	5.1	5.0	5.0	4.4	4.4	4.25	4.0
35.....	5.5	5.4	5.7	5.95	6.0	5.5	4.8	4.8	5.1	5.0
45.....	5.5	5.8	6.1	6.8	6.5	5.5	5.3	5.1	5.52	5.25
55.....	6.0	6.3	6.5	7.65	7.0	6.0	5.7	5.4	5.95	6.0
65.....	6.0	6.8	6.9	8.5	7.0	6.0	6.1	5.7	6.8	6.0
75.....	6.0	7.3	7.3	9.35	7.0	6.0	6.6	6.0	7.65	6.5
85.....	6.5	7.6	7.7	10.2	8.0	6.5	6.9	6.3	8.5	7.0
95.....	6.5	7.9	8.0	11.05	8.0	6.5	7.2	6.6	9.35	7.0
100.....	6.5	8.0	8.1	11.05	9.0	6.5	7.3	6.8	9.35	7.0
110.....	7.0	8.3	8.4	11.9	9.0	7.0	7.5	7.0	10.2	7.25
120.....	7.0	8.5	8.7	11.9	10.0	7.0	7.7	7.2	10.2	7.5
130.....	7.5	8.7	8.9	12.75	10.0	7.5	7.9	7.5	11.05	8.0
140.....	7.5	9.0	9.2	12.75	11.0	7.5	8.2	7.7	11.05	9.5
150.....	7.5	9.2	9.5	13.6	12.0	7.5	8.4	7.9	11.9	10.0
160.....	8.0	9.5	9.8	13.6	12.0	8.0	8.6	8.1	11.9	10.0
170.....	8.0	9.7	10.0	14.45	12.5	8.0	8.8	8.3	12.75	10.5
180.....	8.5	9.9	10.3	14.45	12.5	8.5	9.0	8.6	12.75	11.0
190.....	8.5	10.2	10.5	15.3	12.55	8.5	9.3	8.8	13.6	11.0
200.....	8.5	10.4	10.8	15.3	12.75	8.5	9.5	9.0	13.6	11.0
220.....	9.0	10.7	11.3	15.3	13.0	9.0	9.8	9.5	13.6	11.5
240.....	9.5	11.1	11.9	15.3	13.0	9.5	10.1	9.9	13.6	11.5
260.....	10.0	11.4	12.4	16.15	13.25	10.0	10.3	10.4	14.45	11.75
280.....	10.5	11.7	13.0	16.15	13.25	10.5	10.6	10.8	14.45	12.0
300.....	10.5	12.1	13.5	17.0	13.5	10.5	10.9	11.2	15.3	12.25
320.....	11.0	12.3	14.1	17.0	14.0	11.0	11.1	11.7	15.3	12.5
340.....	11.5	12.5	14.6	17.85	14.5	11.5	11.4	12.2	16.15	13.0
360.....	12.0	12.7	15.1	17.85	15.0	12.0	11.6	12.6	16.15	13.0
380.....	12.5	13.0	15.7	18.7	15.0	12.5	11.8	13.1	17.0	14.0
400.....	12.5	13.2	16.2	18.7	15.5	12.5	12.0	13.5	17.0	14.0
Average.....	8.3	9.3	10.1	12.9	10.6	8.3	8.5	8.4	11.4	9.4

From this table it will be observed that although for short distances the Missouri rates are comparatively high, they are somewhat lower than the Illinois and Iowa rates, and considerably lower than the Nebraska and Kansas rates on wheat and flour for distances over 50 miles, and on corn for distances over 75 miles, with the exception that for distances over 340 miles the Missouri rates on corn are slightly higher than the Illinois rates.

The record is not sufficient to justify a determination as to the reasonableness of the present interstate rates from interior Missouri points to St. Louis. Comparisons were made of the level of the state rates in Missouri and other states, but similar comparisons were not made with regard to the interstate rates. The record does show, however, that the interstate rates of Missouri carriers for like distances from interior Missouri points to St. Louis vary greatly. The following table gives a comparison of interstate rates per 100 pounds maintained by the various roads serving St. Louis from the west with intrastate rates for like distances prescribed subsequent to and prior to July 12, 1913.

Comparison of rates on wheat to St. Louis for like distances.

Distance to St. Louis (miles).	Interstate.						Intrastate.	
	M. P. line from Granby, Mo., to St. Louis.	St. L. & S. F. line from Kansas City, Mo., to St. Louis.	M., K. & T. line from Parsons, Kans., to St. Louis.	C., R. I. & P. line from Kansas City, Mo., to St. Louis.	Wabash line from Omaha, Nebr., to St. Louis.	C., B. & Q. line from Omaha, Nebr., to St. Louis.	Effective July 12, 1913.	Prior to July 12, 1913.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
50.....	7	7	5	7	7	6	5½	7½
75.....	8	8	7	8	9	7	6	9
100.....	9	10	9	10	9½	7	6½	10
125.....	10	11½	9	10	10	8	7	11½
150.....	11	12	10	11	10½	10½	7½	12½
175.....	12	14	10	13	10½	10½	8	14
200.....	13	14	12	13	10½	10½	8½	14½
225.....	13	14½	13	13	11	10½	9	15½
250.....	13	15½	13	13	11½	11	9½	15½
275.....	16	16	16	13	11½	11½	10	16
300.....	16	16	16	13	11½	11½	10½	16½
325.....	16	16	16	.....	12½	11½	11	16½
350.....	16	16	16	.....	12½	12½	11½	17
375.....	16	16	.....	.....	.....	12½	12	17½
400.....	16	15	.....	.....	.....	12½	12½	17½

It will be observed that the rates maintained by the Missouri Pacific, St. Louis & San Francisco, and the Missouri, Kansas & Texas railways from points in southern Missouri are considerably higher for distances over 250 miles than the rates maintained by the remaining carriers which traverse northern Missouri. Possibly on some lines changes should be made, but from what has already been said it is plain that no change should be made without due consideration of the relation of the rates to and from St. Louis with the rates to and from Memphis. The present intrastate rates and their use in connection with outbound interstate rates from St. Louis have disturbed this relationship. In case the intrastate rates remain in effect a widespread revision of rates from interior Missouri points through Memphis to the southeast and the Mississippi Valley and of the direct rates to the southwest will have to be made. Carriers argue that this revision would even spread to the rates from Kansas and Nebraska points to St. Louis and other markets, and in support of this contention show that the Missouri intrastate rates to St. Louis from points immediately east of the Kansas-Missouri and Nebraska-Missouri boundary lines are from 3½ to 5 cents less than rates from points only a few miles farther distant immediately west of the state boundary lines.

The Missouri intrastate rates on grain and grain products and other commodities were under consideration in the *Missouri Rate cases*, 230 U. S., 474. Simultaneously with the decision in those cases the United States Supreme Court rendered its decision in the *Minnesota Rate cases*, in which the legality of rates established on intrastate

traffic by the Minnesota Railroad and Warehouse Commission were under consideration. Both cases arose upon petitions by the carriers for injunctions to restrain the enforcement of the state rates, which relief was denied, the court deciding that the rates established by the states were not confiscatory. In both cases it was argued that the state rates, although confined to intrastate transportation, constituted an unwarrantable interference with interstate commerce, and that relief should be afforded upon this ground. In the *Minnesota cases*, at pages 419 and 420 of the opinion, the court in discussing this contention said:

* * * If it be assumed that the statute should be so construed, and it is not necessary now to decide the point, it would inevitably follow that the controlling principle governing the enforcement of the act should be applied to such cases as might thereby be brought within its purview; and the question whether the carrier in such a case was giving an undue or unreasonable preference or advantage to one locality as against another, or subjecting any locality to an undue or unreasonable prejudice or disadvantage, would be primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts. The dominating purpose of the statute was to secure conformity to the prescribed standards through the examination and appreciation of the complex facts of transportation by the body created for that purpose; and, as this court has repeatedly held, it would be destructive of the system of regulation defined by the statute if the court without the preliminary action of the Commission were to undertake to pass upon the administrative questions which the statute has primarily confided to it. *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426; *Baltimore & Ohio R. R. Co. v. Pitcairn Coal Co.*, 215 U. S., 481; *Robinson v. Baltimore & Ohio R. R. Co.*, 222 U. S., 506; *United States v. Pacific & Arctic Co.*, 228 U. S., 87. In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the act, and no action of that body is before us for review.

In the *Missouri Rate cases*, 230 U. S., 474, 496, where the same point was raised, the court said:

* * * We need not review the arguments addressed to conditions of transportation in Missouri and the relation of intrastate to interstate rates, for while the case has its special facts by reason of the location of the state and the use of the Mississippi and Missouri rivers as basing points in rate making, the controlling question thus presented with reference to the authority of the state to prescribe reasonable intrastate rates throughout its territory, unless limited by the exercise on the part of Congress of its constitutional power over interstate commerce and its instruments, is not to be distinguished in any material respect from that which was considered and decided in the *Minnesota Rate cases*, *ante*, p. 352. For the reasons stated in the opinion in those cases it must be held that the court below properly refused to sustain this objection to the Missouri statutes.

The Commission's jurisdiction to require carriers to remove a discrimination against interstate commerce effected by the maintenance of intrastate rates established in compliance with requirements of the state authorities is definitely affirmed in *Houston & Texas Ry. v. United States*, 234 U. S., 342, upholding this Commission's deter-

mination in *Railroad Commission of Louisiana v. St. L. & S. W. Ry. Co.*, 23 I. C. C., 31. In its opinion the Supreme Court said with regard to the provisions of section 3 of the act, page 356:

This language is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn. There is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier. It is apparent from the legislative history of the act that the evil of discrimination was the principal thing aimed at, and there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach. * * *

With regard to the proviso of section 1 of the act that its provisions "shall not apply to the transportation of passengers and property * * * wholly within one state," the Supreme Court said, pages 358 and 359:

The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the Commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act. Such a matter is one with which Congress alone is competent to deal, and in view of the aim of the act and the comprehensive terms of the provisions against unjust discrimination there is no ground for holding that the authority of Congress was unexercised and that the subject was thus left without governmental regulation. * * *

And on pages 359 and 360:

* * * In the view that the Commission was entitled to make the order, there is no longer compulsion upon the carriers by virtue of any inconsistent local requirement. * * *

* * * So far as these interstate rates conformed to what was found to be reasonable by the Commission, the carriers are entitled to maintain them and they are free to comply with the order by so adjusting the other rates, to which the order relates, as to remove the forbidden discrimination. But this result they are required to accomplish.

In *Class Rates between Stations in Louisiana*, 33 I. C. C., 302, 304, the Commission held:

The imposition of higher rates on interstate than on state traffic between the same points, in the same direction, over the same rails, subjects the interstate traffic to unjust discrimination in violation of the act to regulate commerce. * * *

A like determination was reached in *Interstate Class and Commodity Rates in Louisiana*, 33 I. C. C., 626.

The discriminations which have resulted from the establishment of intrastate rates lower than the interstate rates contemporaneously maintained from interior Missouri points to St. Louis bring the instant cases within the rules established in the cases referred to in the preceding paragraphs. The alternative plans suggested by the Southwestern Missouri Millers' Club can not afford an effective remedy. The establishment of joint through rates from all points west to all

points east of St. Louis is undesirable because of the variable out-bound balances which would result and the consequent opportunity for the manipulation of rates. The present system of reshipping rates was established as an avenue of escape from just such a situation. Moreover, St. Louis would still be entitled to a reasonable out-bound rate on all grain and grain products which had not moved in under the inbound proportion of the through rate, and the combination of the intrastate rates inbound and the local rates outbound might still be less than the through rates, as was the case in the movement to central freight association and trunk line territories under the local commodity rates made effective from St. Louis subsequent to the preliminary decision of the Commission in *Merchants Exchange of St. Louis v. B. & O. R. R. Co., supra*. The local rates out of St. Louis can not be limited according to the point of origin of the shipment or the rates which were paid inbound, and it would therefore be unlawful to require the cancellation of inbound billing on shipments made outbound under the local rates. The difference between the interstate rate and the intrastate rate inbound could not be collected on an outbound shipment at the local rate. The intrastate movement to St. Louis must be considered as a separate movement and can not be tied up to the outbound movement in such a manner as to consider the two one through movement. All of these considerations lead to the conclusion that the only effective remedy for the present unsatisfactory situation is to require the maintenance of one set of rates on grain and grain products from interior Missouri points to St. Louis applicable alike on intrastate and interstate shipments.

We therefore find:

(1) That the defendant carriers serving St. Louis from the west maintain higher interstate rates from interior Missouri points to St. Louis than the intrastate rates maintained from the same points to St. Louis under substantially similar circumstances and conditions.

(2) That thereby an unlawful and undue prejudice and advantage is given to St. Louis and a discrimination that is unjust and unlawful is effected against interior Missouri and southern Illinois points and East St. Louis.

(3) That the carriers shall cease and desist from said discrimination.

An appropriate order will be entered

84 L. C. C.

GOLDFIELD CASES.

No. 6996.

INQUIRY AND INVESTIGATION CONCERNING THE REASONABLENESS OF FREIGHT RATES FROM VARIOUS POINTS IN THE UNITED STATES TO POINTS ON CERTAIN RAILROADS IN NEVADA.

Rehearing of No. 4273.¹

GOLDFIELD CONSOLIDATED MINES COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted June 14, 1915. Decided June 17, 1915.

1. There is practically no general freight traffic on the Tonopah & Goldfield Railroad, Bullfrog-Goldfield Railroad, Las Vegas & Tonopah Railroad, and Tonopah & Tidewater Railroad north of Ryan, Cal., except the transportation of supplies to Tonopah, Goldfield, and Millers, Nev.
2. The lines of these railroads pass through an arid and mountainous region, barren of timber, and nearly devoid of other vegetation, with severe grades and difficult operating conditions.

¹ This proceeding also embraces rehearings in—No. 4426, Goldfield Consolidated Mines Company v. Southern Pacific Company et al.; No. 5062, Goldfield Consolidated Milling & Transportation Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5062 (Sub-No. 1), Tonopah Belmont Development Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5062 (Sub-No. 2), Goldfield Consolidated Milling & Transportation Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5150, Goldfield Consolidated Milling & Transportation Company v. Southern Pacific Company et al.; No. 5233, Goldfield Consolidated Milling & Transportation Company v. Southern Pacific Company et al.; No. 5243, Goldfield Consolidated Milling & Transportation Company v. Lehigh Valley Railroad Company et al.; No. 5307, Tonopah Extension Mining Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5457, Goldfield Consolidated Mines Company v. Pennsylvania Company et al.; No. 5458, Goldfield Consolidated Mines Company v. San Pedro, Los Angeles & Salt Lake Railroad Company et al.; No. 5459, Goldfield Consolidated Mines Company v. Missouri Pacific Railway Company et al.; No. 5608, Goldfield Consolidated Mines Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5814, Goldfield Consolidated Milling & Transportation Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 5815, Goldfield Consolidated Milling & Transportation Company v. Southern Pacific Company et al.; No. 5902, Tonopah Extension Mining Company v. Chicago, Rock Island & Pacific Railway Company et al.; No. 6159, Goldfield Merger Mines Company v. Las Vegas & Tonopah Railroad Company et al.; No. 6231, Hall, Luhrs & Company v. Southern Pacific Company et al.; No. 6364, Goldfield Consolidated Mines Company v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 7604, Montana Tonopah Mines Company v. Southern Pacific Company et al.; and No. 7604 (Sub-No. 1), Montana Tonopah Mines Company v. Atchison, Topeka & Santa Fe Railway Company et al.

3. The scale of wages paid to employees is necessarily higher than in other sections of the United States.
4. The traffic is so light and the revenues are so meager that only one of these roads has been able, since the date of its construction, to meet its operating expenses and fixed charges.
5. The outlook for the future of these lines is not encouraging.
6. The roads are apparently being operated with reasonable economy consistent with good service.
7. The rates to these Nevada points are on a higher level than the rates for like distances in other parts of the country.
8. The rates complained of in the cases above cited not found unreasonable. Complaints dismissed.

W. P. Seeds, H. C. Leavitt, and Hoyt, Gibbons & French for complainants.

H. H. Brown for Tonopah & Goldfield Railroad Company.

C. O. Whittemore for Las Vegas & Tonopah Railroad Company and Bullfrog-Goldfield Railroad Company.

E. W. Kemp for Tonopah & Tidewater Railroad Company.

C. W. Durbrow for Southern Pacific Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This is an investigation by the Commission on its own motion concerning the reasonableness of rates for the transportation of freight from various points in the United States to points in Nevada on the Tonopah & Goldfield Railroad, Las Vegas & Tonopah Railroad, and Bullfrog-Goldfield Railroad.

The above-named complaints have been filed with the Commission, attacking the reasonableness of rates on various commodities from San Francisco and San Diego, Cal., Beaver Falls, Pa., and St. Louis, Mo., to Goldfield, Tonopah, and Millers, Nev. The comparisons offered by complainants at the hearings on these complaints showed that the rates on many commodities from the points of shipment above named and from many other points to these Nevada destinations were higher than the rates prevailing in many other parts of the country for similar distances. The testimony also showed such a sparsity of traffic upon these Nevada lines that the comparisons above referred to were not convincing as to the unreasonableness of these rates to Nevada points, and the complaints were dismissed. Upon applications for rehearing of some of these cases the Commission, on June 4, 1914, vacated its orders dismissing these complaints, reopened the cases for further hearing, and ordered this investigation concerning the reasonableness of the rates from various points in the United States to points in Nevada on these roads.

Prior to the hearing in this investigation the Commission submitted the following suggestions to the interested parties in the various cases:

34 I. C. C.

Complainants in the cases above assigned for hearing or rehearing will be expected to show whether or not the traffic and transportation conditions are substantially the same under the rates to Tonopah, Goldfield, and neighboring points as under the rates which they offer in comparison, and where the rates offered in comparison are commodity rates, that the traffic to Tonopah, Goldfield, and neighboring points justifies commodity rates.

DEFENDANTS WILL BE EXPECTED TO SHOW.

1. The rate divisions of the Tonopah & Tidewater, the Bullfrog-Goldfield, the Las Vegas & Tonopah, and the Tonopah & Goldfield railroads with the Atchison, Topeka & Santa Fe Railway, the Southern Pacific, the San Pedro, Los Angeles & Salt Lake Railroad, and any other lines with which they make joint rates; also any divisions of rates between themselves.

2. What the prospects were which induced the construction of the Tonopah & Tidewater, the Bullfrog-Goldfield, the Las Vegas & Tonopah, and the Tonopah & Goldfield railroads.

3. How these lines were built, and if by construction companies, whether said construction companies and the railroads constructed had directors and stockholders in common, and how the prices paid by the railroad companies were determined.

4. The causes of the yearly fluctuation in the tonnage of these lines and the significance of any increase in tonnage during the years ending June, 1913, and June, 1914.

5. The causes of the yearly fluctuation in operating expenses of these lines.

6. Reductions in the revenues of these lines, if any, caused by any state commission.

7. Reductions in revenues, if any, caused by orders of the Interstate Commerce Commission.

8. Extent and cost of any disasters caused by fire or flood or accident by which these lines may have been affected.

9. Character and cost of additions and betterments which have been made since the period of construction.

10. Effect of consolidations between these lines.

11. Salaries of officers and wages paid to employees by these lines, and how such salaries and wages compare with the salaries and wages paid by railroads generally.

12. Outlook for these properties in the development of new business of any kind.

In response complainants submitted a statement showing the altitude of the various summits crossed on routes from San Diego Cal., to Goldfield, Nev.; Silver City, N. Mex.; and Prescott, Ariz.; and on routes from Los Angeles, Cal., to Fairfield, Utah; Cochise, Pearce, Fairbank, Tombstone, and Prescott, Ariz.; and the distances to these several points from San Diego and Los Angeles.

Statements were also introduced comparing the rates on certain commodities from Chicago, Ill., to Goldfield with the rates on the same commodities from Chicago to Clarksdale, Clifton, Nogales, and Bisbee, Ariz., and to Ely, Nev. Other statements showed comparisons of class and commodity rates from Los Angeles, Cal., to Goldfield with rates from Los Angeles to Bisbee, Clifton, and Clarksdale, Ariz.

All of these statements tended to show that the rates from California and from eastern points to Goldfield were upon a higher level than the rates to the Arizona points referred to, and some of them were higher than the rates on corresponding articles to Ely and Austin, Nev., over equal or greater distances. Ely is the center of a copper-mining district on the Nevada Northern Railroad. This railroad extends in a southerly direction from Cobre, Nev., a point on the Southern Pacific Company's line 646 miles east of San Francisco, to Ely, a distance of 140 miles. Austin, Nev., is a point on the Nevada Central Railroad. This road extends in a southerly direction from Battle Mountain, on the Southern Pacific Company's line, 477 miles east of San Francisco, to Austin, a distance of 93 miles. A statement was offered showing the elevations of the various summits crossed on the line of the Nevada Northern Railroad, but no testimony was introduced showing the transportation or traffic conditions on the Nevada Central Railroad.

Tonopah and Goldfield are mining camps about 30 miles apart, located in the western part of Nevada in the midst of a wide region with practically no present agricultural possibilities. Tonopah is served by the Tonopah & Goldfield Railroad, which extends from Goldfield through Tonopah to Mina, a distance of 100 miles, where it connects with the Southern Pacific line. This section of the Southern Pacific line extends from Hazen, Nev., a point on that company's line 289 miles east of San Francisco and 138 miles north of Mina, in a general southerly direction through Nevada and California, and connects with the Southern Pacific Company's main line in southern California at Mojave, 532 miles south of Hazen.

Goldfield is served by the Tonopah & Goldfield Railroad, which hauls traffic into that camp from the north in connection with the Southern Pacific line, and is served also by the Bullfrog-Goldfield Railroad, which extends in a southerly direction from Goldfield to Beatty, Nev., a distance of 79½ miles. At Beatty this road connects with the Tonopah & Tidewater Railroad, which extends in a southerly direction 168 miles from Beatty to Ludlow, at which point it connects with the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe. At Beatty connection is also made with the Las Vegas & Tonopah Railroad, extending from Beatty in a southeasterly direction 118.4 miles to Las Vegas, Nev., where connection is made with the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter called the Salt Lake line. Both Tonopah and Goldfield are, therefore, served by competing routes from California points and from the east.

In response to the questions asked by the Commission, it was shown by the Tonopah & Goldfield Railroad that rates to Tonopah and Goldfield through the Mina gateway made by combination on Mina

are divided as made; that is, the Tonopah & Goldfield Railroad receives its local rate from Mina to destination. Class and commodity rates from California points and from eastern points via Mina to Tonopah and Goldfield which are less than full combination are divided on a rate prorata basis. For example, whatever per cent the class rate upon any article from Mina to Goldfield may be of the sum of the class rates from point of origin to Mina, and from Mina to Goldfield, this railroad receives the same per cent of the through rate on the article whether such through rate is a class or commodity rate. The Tonopah & Tidewater Railroad and the Bullfrog-Goldfield Railroad receive 62.2 per cent of the revenue derived from business moving from southern California points to Goldfield and 57.8 per cent of the revenue on business originating at San Francisco. On business from eastern points carried by the Santa Fe to Ludlow, and thence turned over to the Tonopah & Tidewater, these roads receive 40 per cent of the revenue on business originating at Denver or points east of Denver. If originating on lines other than the Santa Fe, the line originating the traffic and turning it over to the Santa Fe is first accorded its division; the balance of the rate is then divided, 60 per cent to the Santa Fe and 40 per cent to lines north of Ludlow. Of the revenue derived from traffic moving on class rates accruing to the lines north of Ludlow the Tonopah & Tidewater receives 60 per cent and the Bullfrog-Goldfield 40 per cent. Of the revenue derived from traffic moving on commodity rates accruing to the lines north of Ludlow 56 per cent is received by the Tonopah & Tidewater and 44 per cent by the Bullfrog-Goldfield.

The Las Vegas & Tonopah Railroad receives business from the Salt Lake line at Las Vegas, Nev. On business from San Francisco Bay points which moves to San Pedro by water the steamer line receives 12½ per cent on class rates and 20 per cent on commodity rates, and the remainder is divided between the Salt Lake line and the lines east of Las Vegas upon an equated mileage basis, allowing each mile of the lines west of Las Vegas to count for 2 miles on the Salt Lake line. The lines west of Las Vegas receive 52.25 per cent of the revenue that accrues to the rail lines on this traffic. These lines receive also 50 per cent of the revenue accruing on traffic from Southern California and 47.08 per cent on all traffic from or to Utah points, except ore, and 40 per cent on the ore traffic. On traffic moving through Salt Lake City the revenue accruing to lines west of Salt Lake City is divided by giving to the lines west of Las Vegas 46.8 per cent, and 53.2 per cent to the Salt Lake line. On traffic moving to Goldfield on class rates the revenue accruing to the lines west of Las Vegas is divided 60 per cent to the Las Vegas & Tonopah Railroad and 40 per cent to the Bullfrog-Goldfield Rail-

road, and on traffic moving on commodity rates the Las Vegas & Tonopah receives 56 per cent of the revenue and the Bullfrog Goldfield receives 44 per cent.

It will be observed that the Tonopah & Goldfield Railroad is, in effect, a branch line and feeder of the Southern Pacific; the Tonopah & Tidewater is a feeder of the Santa Fe; and the Las Vegas & Tonopah is a feeder of the Salt Lake line; while the Bullfrog-Goldfield is a stem that is necessary to permit both the Las Vegas & Tonopah and the Tonopah & Tidewater to reach the mining camps. The divisions accorded to these small lines appear to be satisfactory to them.

Much could be said of the prospects that induced the building of each of these lines. A silver mine was discovered at Tonopah in the latter part of the year 1900. During 1901 the discoverer of this mine permitted lessees to operate on various parts of the property, and a very large amount of ore was taken out. Tonopah was then 60 miles from the nearest railroad, a narrow-gauge line then known as the Carson & Colorado Railroad, extending from a point on the Virginia & Truckee Railroad, about 40 miles south of Reno, Nev., to Keeler, Cal. This railroad is now a part of the Southern Pacific system. Ore had to be hauled by wagon to the railroad and thence shipped to mills or smelters at or near Salt Lake City or San Francisco. Only the most valuable ore was of sufficiently high grade to bear the high transportation charge. The lessees, therefore, piled upon the dumps a large quantity of ore that either had to await the construction of mills or the establishment of a cheaper method of transportation. There were no mills in Tonopah at that time and the immense ore tonnage then in sight and the prospective tonnage from the development of this mine and others soon discovered, the rapidly increasing population, and the large amount of building necessary to house that population were the principal inducements to the building of the first railroad.

The Tonopah Railroad was completed from Mina to Tonopah July 4, 1904. It was a narrow-gauge line about 70 miles long and is said to have cost \$993,000.

Gold mines were discovered at Goldfield in the fall of 1903, activities began in 1904, but the real rush did not take place until 1905. The migration of men and money into this section of Nevada for the development of these mines is said to be without a parallel in the history of mining development in the west since the first discovery of gold in California. The lessees on the various properties in Goldfield had to haul their ore to Tonopah, the then nearest railroad station. The rich ore veins and prospective tonnage, the rush to Goldfield, and the extraordinary building activity, all combined to induce the building of the extension of the Tonopah Railroad to Goldfield.

This was completed into Goldfield in 1905. The Tonopah Railroad was reconstructed into a standard-gauge line and the two were consolidated under the name of the Tonopah & Goldfield Railroad. At about the same time the line of the Southern Pacific Company from Mina north was made a standard-gauge railroad. A cut-off, known as the Hazen cut-off, was constructed from Churchill to Hazen and a through standard-gauge railroad was for the first time in operation from California and eastern points to these mining camps.

The tonnage and travel over the Tonopah Railroad during the 16 months of its operation as a narrow-gauge road was so great as to tax its capacity to the utmost, and its net income during the period named was sufficient to pay for more than one-half its original cost. The population of Goldfield during the years 1905 and 1906 was estimated at approximately 20,000 people. Tonopah had a population of nearly 10,000, while the outlying mining districts that drew their supplies from or through these camps had a population of at least 10,000 persons. In the vicinity of Beatty and Rhyolite, 75 miles south of Goldfield, many promising mines had been discovered, and important development work was going on. In this district alone prior to the building of any railroad to that point probably 10,000 persons had established at least a temporary residence. A large amount of lumber for building purposes, supplies for mines, and the necessities of life for the persons who had flocked into the district were being hauled by wagon from Goldfield or from Las Vegas, and the confidence of the mine operators in the value and future of these mines was almost unlimited. Under these circumstances the Bullfrog-Goldfield Railroad was projected and built from Goldfield to Beatty and Rhyolite in the winter of 1905-6. While the promoters and builders of this road were in large part the same men who had constructed the Tonopah & Goldfield Railroad and held a large interest in that road, the Tonopah & Goldfield Railroad Company took no part in the construction, financing, or subsequent operation of the Bullfrog-Goldfield Railroad.

The Tonopah & Tidewater Railroad, extending from Ludlow to Beatty, a distance of 168 miles, was completed in December, 1907. This road was constructed primarily to furnish a rail outlet for the borax deposits in Death Valley, Inyo county, Cal. These deposits are reached through a short branch line from Death Valley Junction, a station 37 miles south of Beatty. The borax deposits on this line had been developed many years before, and prior to the time of the building of the railroad a very large tonnage of borax had been produced and hauled out by teams. There were also deposits of talc, clay, and silica that promised to furnish a considerable tonnage. The mines near Beatty, the strong demand for transportation facilities to transport lumber and supplies thereto, and the prospective ore

tonnage were the inducements that brought about the extension of this road to Beatty.

The Las Vegas & Tonopah Railroad was completed from Las Vegas to Beatty, 119 miles, in October, 1906, and to Goldfield in October, 1907. The promoters and builders of this road were the same men who built and controlled the Salt Lake line. The Salt Lake line runs, for the most part, through an exceedingly barren and sparsely settled country in Utah, Nevada, and California. Its traffic was very light, and the tremendous mining development and influx of population into these mining camps of western Nevada offered a strong inducement to the owners of this property to try to secure some of the traffic in ore and supplies then offered and in prospect.

The Las Vegas & Tonopah Railroad was constructed under the direct control of the officers of the corporation and its employees. No contracts were let except contracts for grading. The book cost of the construction of the line from Las Vegas to Beatty was \$1,148,309.15, and of the part of the line from Beatty to Goldfield, \$1,692,753.82. Stock to the amount of \$1,500,000 was issued and sold at par and notes of the company were given for the balance, amounting to approximately \$1,341,000. Neither interest nor any part of the principal has ever been paid on any of these notes up to the present time.

The Bullfrog-Goldfield Railroad was constructed by the Armagosa Construction Company under a contract with the railroad company under the terms of which there were delivered to the construction company \$1,992,500 in the capital stock of the railroad company and \$1,500,000 first mortgage bonds and \$184,000 bills payable, in consideration of which the construction company turned over to the railroad company a completed line of railroad 79 miles long, extending from Goldfield to the vicinity of Rhyolite, with sidetracks, stations, terminals, and equipment, and a considerable amount of materials and supplies and other property. The record does not disclose whether or not the officers and directors of the construction company were the same as of the railroad company for whom the railroad was built. The road has never paid its operating expenses, and the deficiency has been made up each year by the controlling corporation, which is the Tonopah & Tidewater Railroad Company.

The Tonopah & Tidewater Railroad was built by the railroad company itself, and no contracts were let except for some grading in the Armagosa Canyon, where certain heavy work was encountered which required more stock and equipment than the railroad company possessed. The total original book cost as reported by the railroad company was \$3,573,673.67. Bonds were issued for 675,000 pounds sterling, and the cash realized from the sale of these bonds, amounting

to \$3,285,344.10, built and equipped the road. While this road has been able to earn enough to pay its operating expenses, it has not been able to meet its interest obligations since 1908, and the deficiency has been paid each year by the Borax Consolidated Company of London. This company has guaranteed the bonds of the railroad company. The largest deficiency for any one year was \$100,609.84, in 1911, and the smallest deficiency was \$25,140.89, for the fiscal year of 1913. The annual interest on the bonds of this road amounts to approximately \$150,000. About two-thirds of this interest has been paid by the railroad company and one-third by the borax company, guarantor of its bonds.

The Tonopah Railroad was built by the Tonopah Mining Company, at that time owning and operating the principal mine in Tonopah. The president of the mining company was also the president of the railroad company, and was a director in both companies. The extension of the road from Tonopah to Goldfield was constructed by the Pacific Construction Company, and was then called the Goldfield Railroad. The stock in the construction company was all held by three men, and these men were all stockholders and directors of the Goldfield Railroad. The Goldfield Railroad and the Tonopah Railroad merged their properties into what is now the Tonopah & Goldfield Railroad.

The total book cost of the Tonopah Railroad as it stood at the time of the consolidation was \$1,476,000, and the book cost of the Goldfield Railroad was \$1,110,000, making the total book cost of the Tonopah & Goldfield Railroad approximately \$2,586,000. Twenty-one thousand five hundred shares of stock were issued in the name of the company of the par value of \$100 per share, and bonds were sold to the amount of \$1,017,000. The total capitalization as represented by the stock and bonds of the company amounted to \$3,167,000.

From October, 1907, to July, 1914, two parallel lines of railroad, the Las Vegas & Tonopah and the Bullfrog-Goldfield, were operated from Beatty to Goldfield. In July, 1914, a consolidation was effected by which one of these lines was abandoned and the traffic of the Tonopah & Tidewater and of the Las Vegas & Tonopah is now brought to Beatty and from that point hauled over the line of the Bullfrog-Goldfield Railroad to Goldfield. It is expected that this consolidation should result in a considerable saving in operating expenses. During the years 1911, 1912, and 1913 neither the Bullfrog-Goldfield nor the Las Vegas & Tonopah received enough revenue from operation to pay operating expenses and taxes, and the Tonopah & Tidewater Railroad has not since 1908 earned sufficient revenue to pay its operating expenses and fixed charges. The deficiency of the Las Vegas & Tonopah Railroad has been paid by its stockholders, that of the Bullfrog-Goldfield by the Tonopah & Tidewater, and

that of the Tonopah & Tidewater Railroad by the Borax Consolidated Company.

The only one of these four roads that has been able to return any dividends to its stockholders is the Tonopah & Goldfield Railroad. This road has been able to pay and return dividends to its stockholders of 5½ per cent during the years of its operation, and to retire, through its sinking fund provision, approximately 60 per cent of the bonds outstanding at the time of its completion. Its total outstanding bonded debt is now \$400,000. All of these roads are almost entirely dependent on the operation and development of the mining industries in the territory which they serve. The total irrigated and cultivated area along the lines of these four roads, comprising 500 miles of line, does not exceed 500 acres of land. There is no timber along any of these lines and very little stock. Most of the country traversed is not adapted to stock raising on account of the scarcity of water, the small rainfall, and arid climate. The sparsity of traffic on the lines south of Goldfield is shown by the fact that the mixed train from Las Vegas to Beatty, which runs six times a week, averages from 8 to 11 passengers and from 1 to 3 carloads of freight, and returns with a like number of passengers and almost no freight whatever. The trains on the Tonopah & Tidewater Railroad carry about a like amount. The total tonnage handled by the Las Vegas & Tonopah Railroad during the month of October, 1914, was 2,891 tons, and by the Bullfrog-Goldfield Railroad, 2,888 tons. The average tonnage per train was 57.8 tons.

The greatest tonnage handled by the Tonopah & Tidewater Railroad during any one year was 77,548 tons, or an average per train of 124 tons, and the smallest tonnage was 52,924 tons, or 85 tons per train. More than one-third of the tonnage handled by this road is borate, the crude rock from which borax is made. This is mined at Ryan, Cal., about 37 miles south of Beatty. The Tonopah & Goldfield Railroad is the only one of these four roads that handles any great amount of ore tonnage from either Tonopah or Goldfield. The mill used by the Tonopah Mining Company is situated at Millers, 11 miles from Tonopah, and the ore is hauled by rail to this mill. The revenue derived from the haul of this ore during the fiscal year 1914 was approximately \$144,000, or 21 per cent of the total operating revenue of the road. The total tonnage of freight, exclusive of ore, moved by the Tonopah & Goldfield Railroad during the fiscal year 1914 was 70,844 tons, or 113 tons per train each way for each working day. The freight business is practically all moving in one direction, and the trains return to Mina almost without load.

The record shows that these roads have been subjected to certain accidents, washouts, and fires, but none of very great consequence.

The rates on all these lines, both from the east and from the west, were reduced in 1910 by the order of the Commission respecting class rates from Sacramento to points in Nevada, 19 I. C. C., 259. The rates formerly in effect from Sacramento to Hazen, Nev., were as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Rates.....	129	113	102	87	78	78	34	33½	25½	25½

The order of the Commission reduced these rates to the following:

Classes	1	2	3	4	5	A	B	C	D	E
Rates.....	85	71	64	51	43	43	34	28	25	21

The direct effect of the order was to reduce the rates from California points to points in Nevada, but owing to the fact that many rates from eastern points were made by combination over San Francisco, Sacramento, or Los Angeles, reductions were thus brought about from eastern points to this territory. The various orders of the Nevada Railroad Commission have also had the effect of reducing the rates on some of these railroads. A rather notable case is one concerning the rates on forest products from Verdi, Nev., to Tonopah and Goldfield, which resulted in very material reductions in the rates on mining timbers and other lumber.

The scale of wages paid to all the employees of these roads, with the exception of the general officers, is from 25 to 65 per cent higher than the average upon all railroads in the United States. The scale of prices which all of these employees and all other persons residing in these mining camps have to pay for the necessities of life is materially higher than in other parts of the United States. This makes necessary a corresponding increase in the compensation paid to labor of all kinds.

The outlook for the future from the development of new business for these roads is rather gloomy. As before stated, there is little agriculture and no timber along these lines. The country is so arid that without water to irrigate it is almost impossible to produce a crop. There are no streams of any consequence in this territory. A few flowing wells have been developed near Las Vegas, but the results from the use of this water have so far been of small importance. These roads are dependent for traffic upon mining industries in the country traversed by them. The lives of silver or gold mining camps in that state have always been limited. The towns of Rhyolite and Beatty in 1907 had a combined population of probably 10,000 people. Their population now is estimated at 300. As previously stated, Goldfield had a population in 1907 variously estimated at from 15,000 to 20,000 persons. The population now is said to be approximately 5,000. Tonopah had a population in 1907 of nearly 10,000 people, while the present population is not more than half

that number. Nearly the same proportionate shrinkage has taken place in the population of the other outlying mining camps of Silver Peak, Manhattan, and Round Mountain. Sooner or later the ore will become exhausted, and unless new ore bodies are discovered the mills will be dismantled and the population will in large part move away. The railroads built primarily to serve such camps as these can hope for only a limited lease of prosperity. They prosper only while the camps prosper, and the decline of the camps means the decline of the roads. The Tonopah & Tidewater, the Las Vegas & Tonopah, and the Bullfrog-Goldfield entered these camps too late to enjoy the full tide of prosperity, which began to wane in the fall of 1907.

The Tonopah & Goldfield Railroad Company had two or three very prosperous years. Its present revenues, however, are not excessive, and its management asserts that all possible economies are being observed consistent with the quality of service demanded and furnished.

Below is shown a statement of the total revenue, total expenses and taxes, and the railway operating income or loss of these railroads for the fiscal years ended June 30, 1910, 1911, 1912, 1913, and 1914:

BULLFROG-GOLDFIELD RAILROAD COMPANY.

[Miles operated, 79.]

	1910	1911	1912	1913	1914
Total revenues.....	\$128,559.09	\$99,678.93	\$100,163.42	\$99,033.69	\$84,972.35
Total expenses.....	132,402.31	132,084.24	99,367.84	92,785.83	91,308.03
Taxes.....	14,925.20	10,962.88	7,959.51	7,369.10	8,307.92
Railway operating income (or loss).....	1 18,768.42	1 43,367.69	1 7,163.93	1 1,121.24	1 14,641.60

LAS VEGAS & TONOPAH RAILROAD COMPANY.

[Miles operated, 198.]

Total revenues.....	\$164,123.17	\$148,017.33	\$194,549.94	\$196,713.09	\$194,883.17
Total expenses.....	206,399.63	185,732.22	184,363.87	191,506.45	189,529.40
Taxes.....	30,529.53	23,997.97	19,375.29	15,719.70	19,967.41
Railway operating income (or loss).....	1 72,805.99	1 61,712.86	1 9,189.22	1 10,513.06	1 14,613.64

TONOPAH & GOLDFIELD RAILROAD COMPANY.

[Miles operated, 100.]

Total revenues.....	\$789,204.71	\$788,976.75	\$760,442.34	\$996,397.71	\$688,849.83
Total expenses.....	585,140.01	500,935.01	460,670.28	371,084.99	410,873.73
Taxes.....	36,234.34	29,283.11	29,962.65	27,746.50	30,944.00
Railway operating income (or loss).....	1 167,830.36	1 198,758.63	1 269,789.41	1 297,566.22	1 247,032.10
Income per mile of line.....	1,678.80	1,987.58	2,697.89	2,975.66	2,470.32

TONOPAH & TIDEWATER RAILROAD COMPANY.

[Miles operated, 168.]

Total revenues.....	\$421,529.22	\$317,424.49	\$291,390.69	\$328,240.57	\$343,047.73
Total expenses.....	280,695.46	233,945.63	197,339.51	191,691.47	208,168.17
Taxes.....	19,050.80	21,838.68	18,624.58	15,482.43	13,679.19
Railway operating income (or loss).....	1 121,782.96	1 61,640.18	1 75,436.60	1 121,066.68	1 116,200.37
Income per mile of line.....	724.90	366.90	449.02	720.63	691.66

1 Loss.

2 Includes revenues from outside operations.

3 Includes expenses of outside operations.

4 Income.

Without attempting to determine what is a fair return upon railroad investments of this character, it is seen that the average annual railway operating loss of the Bullfrog-Goldfield Railroad Company for the period named was \$17,012.57; for the Las Vegas & Tonopah, \$33,766.95; while for the Tonopah & Goldfield Railroad Company the average annual railway operating income was \$236,195.34 and for the Tonopah & Tidewater Railroad Company \$99,225.36. The operating income of the Tonopah & Goldfield Railroad Company has been sufficient to pay 10 per cent per annum upon an investment of \$2,361,953.40, and the operating income of the Tonopah & Tidewater Railroad Company has been sufficient to pay 10 per cent per annum upon an investment of \$992,253.60. The total length of all of these lines as operated prior to July, 1914, was 545 miles, and as operated at present is approximately 465 miles. The average annual operating income of all of the lines taken together is \$284,641.18. This means an income of \$612.13 per mile of line as now operated, or sufficient to yield 6 per cent per annum on a valuation of \$10,202 per mile, or 10 per cent per annum on a valuation of \$6,121.30 per mile.

Below are shown the class rates from representative California and eastern points to Tonopah and Goldfield and a few commodity rates from California points and from Chicago:

Class rates per 100 pounds from representative points to Goldfield.

From—	1	2	3	4	5	A	B	C	D	E
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
San Francisco and Los Angeles.....	240	213	192	167	145	145	99	92	73	69
Denver.....	365	324	282	249	214	214	152	134	114	108
Missouri River.....	405	359	311	274	235	235	169	147	127	119
Chicago.....	445	393	337	291	249	252	183	158	137	128
Pittsburgh.....	475	418	357	303	259	264	193	167	144	134
New York.....	505	443	377	316	269	277	203	175	151	141
Missouri River to Hazen.....	250	217	183	153	133	133	104	83	79	71
Reno to Goldfield.....	155	142	128	116	102	102	65	64	48	48
Sacramento to Reno.....	85	71	64	51	43	43	34	28	25	21

Commodity rates to Goldfield.

From San Francisco.	Rate.	From Chicago.	Rate.
Beer in wood.....	\$1.00	Structural iron.....	\$1.97
Beer in glass.....	1.10	Bar iron.....	2.25
Cement.....	.50	Iron rails.....	1.116
Crude oil.....	.35½	Canned goods.....	2.35
Canned goods.....	1.54	Sirup.....	2.20
Structural iron.....	1.17	Wrought or cast iron pipe.....	2.10
Nails.....	1.54	Candles.....	2.26
Coal.....	.45	Nails and spikes.....	2.08
Paper.....	1.25	Petroleum oil.....	2.45
Sulphuric acid.....	1.67	Asbestos roofing.....	2.48
Iron pipe.....	1.12½	Bags and bagging.....	2.15
Cereals.....	.85		

These class and commodity rates to Goldfield and Tonopah are materially higher than the rates for like distances to many other points in the country, but the reason for this appears in the following conclusions:

1. The Tonopah & Goldfield, Las Vegas & Tonopah, and Bullfrog-Goldfield railroads and that portion of the Tonopah & Tidewater Railroad north of Ryan, Cal., have almost no traffic whatever on which to rely except the traffic in and out of Tonopah and Goldfield.

2. The revenues which have been derived from traffic on these roads from the date of their construction to the present time have not been sufficient to afford any unreasonable profit to the builders of any of these roads.

3. These lines operate over a mountainous and barren country with severe grades and difficult operating conditions.

4. The scale of wages paid to employees is higher than in many other parts of the country.

5. The investment in railways serving a territory of the character here described is of a temporary character, and the rates applied for the transportation of persons and property over such lines are not necessarily unreasonable, although higher than the rates for like distances in other parts of the country.

6. The immediate rewards from investments in such railroads may reasonably be higher than those resulting from the construction of railways for the service of other more stable communities.

DOCKETS NOS. 4273, 4426, 5233, 5062, 5062 (SUB-NO. 1), 5062 (SUB-NO. 2), 5459, 5458, 5457, AND 5814.

The complaints in the above-numbered cases attacked the rates on bar iron and steel and sulphuric acid from San Francisco to Goldfield; the rate on cyanide of potassium from San Diego, Cal., to Millers, Tonopah, and Goldfield; the rate on acetate of lead from San Francisco and San Diego to Goldfield; the rate on dry litharge from St. Louis, Mo., to Goldfield; the rate on iron mining cars from Salt Lake City to Goldfield; and the rate on metal asbestos roofing from Beaver Falls, Pa., to Goldfield.

These complaints have been fully discussed in former opinions. In all of these cases the Commission had before it the general situation on these southern Nevada lines, and the testimony furnished at various hearings was not sufficient to show that the present rates on these various commodities from the points named were unreasonable or that the amount of traffic in these commodities was sufficient to warrant the establishment of commodity rates. The cases were accordingly dismissed.

At the hearing respecting the general investigation concerning the reasonableness of rates to points on these lines, some further testi-

mony was presented by the complainants tending to show that the general level of these rates to Tonopah and Goldfield was higher than the rates applied for like distances to points in other localities in the United States. Some testimony also was directed to the topographical conditions existing on these lines as compared with the conditions existing upon other lines over which rates were cited for comparative purposes. It is clear that some of the other lines cited for comparison pass through mountainous sections of the country and over summits that are as high or higher than the summits via these lines leading into the Nevada mining camps. The record, however, does not indicate upon any of these lines cited for comparative purposes any such sparsity of traffic and meagerness of revenue as have been shown on these Nevada lines.

We have carefully considered the record in all of these cases and can not find in the facts shown any justification for reversal of our former opinions. Orders will be entered dismissing all of these cases.

The complaint in No. 5150 attacks the rates charged for the transportation of two carload shipments of borax from Alameda, Cal., to Goldfield, Nev. The rates charged are alleged to have been unreasonable to the extent that they exceeded a rate of 80 cents per 100 pounds. Reparation and the establishment of a reasonable rate are asked. The shipments described in the complaint moved in September, 1910, and March, 1912, via the Southern Pacific to Mina, Nev., thence via the Tonopah & Goldfield Railroad to Goldfield. Charges thereon were collected upon the basis of the joint fifth-class rate, which at the time of the first shipment was \$1.83 per 100 pounds, but which at the time of the second shipment had been reduced to \$1.54, and is now \$1.45.

The complaint in No. 5608 attacks the rate applied for the transportation of certain carloads of high explosives from Hercules and Dupont, Cal., to Goldfield. The shipments moved during the period from October 1, 1910, to October 17, 1911. Prior to January 2, 1911, the rate was \$2.88 per 100 pounds. On that date it was reduced to \$2.50, and on November 28, 1913, further reduced to \$2.40. The rates applied for the transportation of these shipments are alleged to be unreasonable, and the complainant asks for reparation and the establishment of rate of \$1.40 for the future. Both the points of shipment are in Contra Costa county in the vicinity of Port Costa. The shipments moved via two routes; one over the Atchison, Topeka & Santa Fe Railway to Stockton, Cal., thence over the Southern Pacific and Tonopah & Goldfield railroads via Hazen and Mina, Nev., to Goldfield, and the other over the Atchison, Topeka & Santa Fe Railway and Tonopah & Tidewater Railroad via Ludlow, Cal.

The complaints in Nos. 5307 and 5243 allege that the rates charged for the transportation of carload shipments of cyanide of potassium from San Diego and San Francisco, Cal., to Tonopah, Nev., during the two years preceding the filing of the complaint were unreasonable, and that defendants collected unreasonable charges for the transportation of two carloads of the same commodity from Perth Amboy, N. J., to Goldfield. All the shipments in question originated at Perth Amboy, N. J., and moved by rail to New York, N. Y., thence via steamer to Galveston, Tex., or to San Diego or San Francisco, Cal., and from these ports via rail to destination. The rate collected was \$3.07 per 100 pounds, which was arrived at by taking the steamer rate of 70 cents from Perth Amboy to San Diego, Cal., and adding thereto the third-class rate of \$2.37 from San Diego to Goldfield. Complainants contend that the third-class rate of \$2.37 from San Diego to Goldfield was unreasonable to the extent that it exceeded \$1.15.

The complaint in No. 5815 alleges that the fifth-class rate of \$1.54 per 100 pounds for the transportation of pig lead in carloads from Selby, Cal., to Goldfield is unreasonable. Reparation is asked on two carloads shipped in March, 1911, and April, 1912.

The complaint in No. 5902 alleges that an unreasonable rate was exacted by defendants for the transportation of a carload of sheet zinc from Peru, Ill., to Tonopah, Nev. The shipment in question moved over the lines of the Chicago, Rock Island & Pacific Railway, Union Pacific Railroad, and Southern Pacific Company to Mina, Nev., thence via the Tonopah & Goldfield Railroad to Tonopah. The rate applied was the joint fifth-class rate of \$2.58 per 100 pounds.

The complaint in No. 6364 attacks the rates on machinery, n. o. s., rolling shelves, steel rolling shelves, and pieces of machinery to Goldfield, Nev., from Pueblo, Colo., of \$2.04 per 100 pounds; from Chicago, Ill., of \$2.61; from Allentown, Pa., of \$2.86; from Cleveland, Ohio, of \$2.68½; from South Akron, Ohio, of \$2.65½; and from San Diego, Cal., of \$1.46. It is alleged that these rates are excessive, unjust, and unreasonable, and that reasonable rates to Goldfield would not exceed from Pueblo, \$1.12; from Chicago, \$1.50; from Allentown, \$1.75; from Cleveland, \$1.62; from South Akron, \$1.62; and from San Diego, 98 cents per 100 pounds.

The complaint in No. 6159 attacks the rate of \$2.73 per 100 pounds on mining machinery from Akron and South Akron, Ohio, to Goldfield, Nev., which is alleged to be excessive, unjust, and unreasonable, and it is asserted that a reasonable rate on mining machinery from Akron and South Akron to Goldfield would not exceed \$1.62 per 100 pounds.

The complaint in No. 7604 alleges that the rate of \$2.50 per 100 pounds charged for the transportation of high explosives from Giant, Cal., to Tonopah, Nev., in effect during the period from February 6 to November 7, 1913, and the rate of \$2.40 per 100 pounds on the same commodity from and to the same points in effect since November 28, 1913, are excessive, unjust, and unreasonable. It is alleged that a reasonable rate for the service would not exceed \$1.25 per 100 pounds.

The complaint in No. 7604 (Sub-No. 1) alleges that the rate of \$2.08 per 100 pounds charged for the transportation of cyanide of potassium from San Diego and San Francisco, Cal., to Tonopah in effect during the period from January 18 to September 24, 1913, and the rate of \$1.92 per 100 pounds on the same commodity from and to the same points in effect during the period from November 29, 1913, to December 15, 1914, were excessive, unjust, and unreasonable. It is alleged that a reasonable rate on this commodity from and to the points named would not exceed \$1.15 per 100 pounds.

Testimony was presented in support of all of these cases tending to show that the rates on classes and on various commodities both from California and from the eastern points of shipment named in these complaints were on a higher level than the rates for like distances to many other points in the country. It has also been shown that the topographical conditions upon these Nevada lines are not materially different from the conditions shown on certain other lines over which rates were cited for comparative purposes. The testimony of complainants has been largely confined to testimony of the character described above. As previously noted, in none of the cases where rates have been cited for comparative purposes has there been shown any such sparsity of traffic or meagerness of revenue as has been shown with respect to the Nevada lines against which these complaints are directed. From a careful consideration of the records in all of these cases we are convinced that the rates complained of have not been shown to be unreasonable or otherwise unlawful, and the complaints will be dismissed.

The complaint in No. 6231 alleges that the defendants exacted an unjust and unreasonable rate for the transportation of one carload of sugar from Crockett, Cal., to Goldfield, Nev. The shipment moved on May 6, 1913, via the Southern Pacific Company's line to Stockton, Cal.; thence via the Atchison, Topeka & Santa Fe Railway to Daggett, Cal.; thence via the San Pedro, Los Angeles & Salt Lake Railroad to Las Vegas, Nev.; thence via the Las Vegas & Tonopah Railroad to Goldfield.

There is no through published rate on sugar from Crockett to Goldfield via the route over which this shipment moved, and the lowest rate available is a combination rate constructed by taking

the rate of $27\frac{1}{2}$ cents per 100 pounds applicable from Crockett to Los Angeles and adding thereto the rate of \$1.54 from Los Angeles to Goldfield. There is a through rate on sugar of \$1.54 per 100 pounds from Crockett to Goldfield applicable via the Southern Pacific to Stockton; Atchison, Topeka & Santa Fe to Ludlow; and the Tonopah & Tidewater Railroad from Ludlow to Goldfield. This rate also applies via the Southern Pacific to Mina, Nev.; thence via the Tonopah & Goldfield Railroad to Goldfield.

On the date of the shipment the complainant instructed the California-Hawaiian Sugar Refining Company at Crockett to ship to C. H. Olds at Goldfield one car of sugar, and instructed the sugar-refining company to route car via the route the shipment moved and to prepay the freight on the same. The bill of lading was issued at Crockett by the agent of the Southern Pacific Company, and the car was consigned to the complainant at Goldfield, care of C. H. Olds. The bill of lading carried the routing specified by complainant and shows the weight of the shipment and the word "prepaid," but shows neither the rate nor the amount of the charges on the shipment. Crockett is not a waybilling station of the Southern Pacific Company, and all freight originating at the sugar refinery is waybilled from Port Costa, Cal. All moneys due the Southern Pacific Company and connecting lines on cars originating at the refinery are paid through the San Francisco office of the refinery. The agent at Port Costa further billed on the San Francisco agent of the Southern Pacific Company for the amount of the freight charges accruing on this car at the rate of \$1.54, and the agent of the Southern Pacific Company at San Francisco collected from the sugar-refinery company at San Francisco \$570.79, which is the correct amount of freight accruing on this shipment at rate of \$1.54 per 100 pounds, which amount was apparently understood by both the agent of the Southern Pacific Company and the sugar-refining company to be in full settlement of freight charges at the weight and rate shown on the prepaid freight bill. When the shipment reached Goldfield it was discovered that the rate of \$1.54 did not apply via the route over which this shipment moved, and additional charges were collected of complainant, amounting to \$101.92, based upon the combination rate of $\$1.81\frac{1}{2}$ per 100 pounds applicable via this route.

Complainant contends that it was the duty of the carrier's agent to advise the shipper presenting this bill of lading with the routing instructions shown thereon that if these instructions were to be complied with a higher rate would obtain than might be had by using other routes. Complainant also contends that it was the duty of the carrier's agent to have inserted in the bill of lading the amount of the freight charges shippers were expected to pay in advance of

the forwarding of shipment. Had this been done, immediate notice would have been given that a higher freight rate would be assessed by this route and the shipper would have had an opportunity to express his option of routes. Had the car been correctly billed at Port Costa and freight charges based upon rate of \$1.81½ per 100 pounds been demanded at San Francisco, it is asserted by complainant, and not denied, there would still have been time to have changed the routing of the car. The complainant contends that this action of the carrier constitutes misrouting under rule 286, paragraph (f) of Conference Rulings Bulletin No. 6:

(f) The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with, or provisions which are contradictory, and therefore impossible of execution. When, therefore, the rate and the route are both given by the shipper in the shipping instructions, and the rate given does not apply via the route designated, it is the duty of the carrier's agent to ascertain from the shipper whether the rate or the route given in the shipping instructions shall be followed. The carrier will be held responsible for any damages which may result from the failure of its agent to follow this course.

It is plain that this ruling does not apply, for this bill of lading contained no provisions that could not lawfully be complied with or that were contradictory. The freight bill prepared by the carrier's agent at Port Costa, presented and collected by the carrier's agent at San Francisco, was made out under the misapprehension that the through rate of \$1.54 applied via the route specified in the bill of lading. This, however, constitutes only a case of erroneous billing, and it is the duty of the carrier to collect the lawfully published rate whether less or more than the rate erroneously applied. The circumstances here shown, therefore, do not constitute a case of misrouting under rule 286 above stated.

The complaint alleges that the combination rate applied was unreasonable via the route the shipment moved. No testimony was presented, however, in support of that assertion. The route via which the shipment moved is approximately 340 miles longer than the short line and involves a four-line haul. The testimony does not warrant a finding of unreasonableness, and an order will be entered dismissing the complaint.

84 I. C. C.

No. 5241.

IOWA STATE BOARD OF RAILROAD COMMISSIONERS
v.

ARIZONA EASTERN RAILROAD COMPANY ET AL.

Decided June 17, 1915.

Former order modified to authorize establishment from certain Iowa points to points in Kansas on and north of the main line of the Atchison, Topeka & Santa Fe Railway Company rates not less than those in effect on May 31, 1911.

J. H. Henderson for complainant.

W. T. Hughes for defendants.

REPORT OF THE COMMISSION ON REARGUMENT UPON PETITION FOR
MODIFICATION.

DANIELS, *Commissioner*:

The respondent has filed a petition for modification of the Commission's order of December 1, 1913, in the above-entitled case. 28 I. C. C., 563. The order in question prescribed a mileage scale in conformity to which rates were to be established from points in interior Iowa to certain destinations in Kansas. This petition alleges that the application of the scale results in rates to Kansas points from Council Bluffs and other specified points in western Iowa lower than the present rates to the same points in Kansas from Omaha and other points similarly situated on the Missouri River.

At the argument upon the petition, at which both protestants and respondents were represented, it became evident that the resulting deviation from the fourth section requires correction, which could be effected by a reduction in the rates from Omaha or an increase in the rates from the points of origin in Iowa here involved.

The findings of the Commission in the *State of Kansas case*, 27 I. C. C., 673, that the rates from Kansas City to the destinations here involved did not warrant reduction, and the long-sustained adjustment whereby rates are the same from all Missouri River cities, are sufficient to lead to the conclusion that the present rates from Omaha to the Kansas destinations under consideration, which are now the same as the rates from Kansas City, are not unreasonable. Therefore, to remedy the deviation from the fourth section indicated, we are of the opinion that the order of the Commission in this case should be modified. This modification will authorize the respond-

ents to establish from the points in Iowa in question to points in Kansas upon the main line of the Atchison, Topeka & Santa Fe to La Junta, Colo., and other points in Kansas north thereof, rates not less than those which were in effect upon May 31, 1914—the day before the order became operative—from the Missouri River cities to the same destinations.

Before issuing a formal order modifying our previous order in this case, however, we shall expect the carriers to advise us as to the method of tariff publication which they desire to make in order to render effective the changes in rates herein approved. It appears that the distance rates are now published in a section of a sectional tariff which authorizes the application of specific rates found in other sections of the tariff if those specific rates are lower than those based upon the distance scale. It is therefore plain that to publish increased specific rates from Iowa points to the Kansas points here in question would afford no remedy so long as the alternative offering of the distance rates where lower than the specific rates is continued. A different method of publishing rates will evidently be necessary, and it is possible that the carriers will exempt the section of their proposed tariff containing the rates proposed to be established from use in the alternative with the distance rates. In case they publish the rates based on the distance scale as applicable only where no specific rates are published, it would seem necessary for them to make careful check of every specific rate, except those published on the Missouri River basis, in order to make sure that the specific rates do not exceed those based upon the distance scale and thus do not violate the order in this case establishing the rates based on the distance scale.

The carriers in submitting their proposal as to the method of making tariff publication of the advanced rates here proposed will, of course, see that conformity with our tariff regulations is observed and will submit for our consideration the specific manner in which they propose to publish the rates as to which relief is sought. It is to be understood that in no instance are such specific rates to exceed those in effect immediately prior to May 31, 1914, from the Missouri River cities to the Kansas destinations. It is also expected that the rates to be published will in all respects, except as otherwise herein permitted, conform to the order in this case of December 1, 1913, as amended February 27, 1914.

No. 7230.
NEBRASKA STATE RAILWAY COMMISSION
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted February 27, 1915. Decided June 18, 1915.

Rates on wheat and on corn, and articles taking the same rates, from certain stations on the line of the Union Pacific Railroad Company in Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

H. T. Clarke, jr., for complainant.

H. A. Scandrett and *C. J. Lane* for Union Pacific Railroad Company.

E. P. Smith for Omaha Grain Exchange, intervener.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The amended complaint names 27 stations on the line of the Union Pacific Railroad Company in Nebraska, Central City to Gothenburg inclusive, from which it is alleged that the rates on wheat and on corn, and articles taking the same rates, to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., are "unreasonably high and unjustly discriminatory as compared with" rates on the same articles to the same destinations from cross-country stations in Nebraska on the line of the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Burlington. The Omaha Grain Exchange, of Omaha, Nebr., intervened for the purpose of protecting the interests of the Omaha market if a reduction of the rates to Kansas City should be required in this case.

Complainant's evidence consists of a comparative statement of rates on wheat and on corn and distances from Union Pacific and cross-country Burlington stations to Kansas City and Omaha, together with some testimony as to the effect of the wheat rate adjustment thus disclosed upon the business of shippers located at the Union Pacific stations. From the territory here involved Kansas City, St. Joseph, and Leavenworth are grouped and take the same rates. Kansas City will therefore be taken as typical. In the following table are shown three representative Union Pacific stations and three

corresponding Burlington stations, together with the rates on wheat per 100 pounds and distances from these points to Kansas City:

To Kansas City from—	Miles.	Rate.	To Kansas City from—	Miles.	Rate.
UNION PACIFIC.			BURLINGTON.		
		Cents.			Cents.
Shelton.....	365	17.00	Kenesaw.....	208	14.00
Overton.....	409	19.95	Loomis.....	342	16.00
Corad.....	434	20.80	Eustis.....	374	17.52

The Union Pacific distances are made via Central City, Valparaiso, Marysville, and Menoken; the Burlington distances via Atchison.

The cross-country distance from Shelton to Kenesaw is 15 or 16 miles. Between the other stations named in the complaint the distance cross country is somewhat greater. By the foregoing table it is shown that while the rates from the Union Pacific stations are higher than from corresponding stations on the Burlington, the line-haul distances are greater.

Complainant's testimony as to the effect of this adjustment is, in substance, that at certain times when the Kansas City market prices were higher than those at Omaha, dealers located at Union Pacific stations have been at a disadvantage in the purchase of wheat grown between the two railroads because the lower rates from Burlington stations to Kansas City made it possible for dealers located on that line to offer higher prices. Under normal market conditions, however, little wheat from this territory moves to Kansas City, and during the last crop year, since July 1, 1914, dealers located on the Union Pacific have been under no disability in purchasing wheat by reason of the rate adjustment here attacked.

Further than this complainant offered no evidence. The tendency of grain grown between two lines of railroad to move toward the line offering the lower rate is of course recognized. *Superior Commercial Club v. G. N. Ry. Co.*, 25 I. C. C., 342, 345. But the fact standing alone, that competition exists between dealers located on two lines of railroad is insufficient to warrant an order requiring the carriers to so readjust their rates as to place these competitors upon an equality. *Chicago-Duluth Grain Rates*, 27 I. C. C., 216, 221.

We are of the opinion and find that the rates here attacked have not been shown to be unreasonable or unjustly discriminatory. An order will accordingly be entered dismissing the complaint.

No. 6251.

LOUDEN MACHINERY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted July 16, 1914. Decided June 14, 1915.

Western classification rating applicable to feed or litter carriers in less than carloads, minimum weights applicable to the same commodities in straight carloads, or mixed with stalls, stanchion frames, or stanchions, and the refusal of defendants to permit the mixture of these commodities in carloads with agricultural implements not found to be unreasonable or otherwise in violation of the act. Complaint dismissed.

J. H. Henderson and D. N. Lewis for complainant.

R. C. Fyfe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a copartnership engaged in the manufacture and sale of feed and litter carriers, stalls, stanchion frames, stanchions, and other specialties, at Fairfield, Iowa. By complaint, filed October 20, 1913, it alleges that the western classification first-class rating on litter carriers and feed carriers in less than carloads is unreasonable and unjustly discriminatory to the extent that it exceeds a second-class rating on litter carriers and a third-class rating on feed carriers; that the 24,000-pound minimum prescribed for carload mixtures of feed or litter carriers, with equipment of tracks and track hangers, should be reduced to 20,000 pounds, with the application of rule 6-B eliminated; and that the application of rule 6-B should also be eliminated from the item which provides for a carload mixture of feed or litter carriers and equipment, with stalls, k. d., stanchion frames, k. d., or stanchions. We are asked to direct either the classification of all of the articles named with agricultural implements or the establishment of a provision under which they may be mixed with agricultural implements.

The classification item attacked, effective June 30, 1913, in supplement No. 9 to western classification No. 51, provides as follows:

Cars:	L. C. L. C. L.
Cars or buckets, feed or litter carrier, in boxes, bundles, or crates.....	1
Cars or buckets, feed or litter carrier, with equipment of tracks and track hangers, in boxes, bundles, or crates, c. l., minimum weight 24,000 pounds, subject to rule 6-B..... ▲
Cars or buckets, feed or litter carrier, with equipment of tracks and track hangers, in boxes, bundles, or crates, in mixed c. l. with stalls, k. d., stanchion frames, k. d., or stanchions, small detached parts in barrels or boxes, other parts in packages or loose, c. l., minimum weight 30,000 pounds, subject to rule 6-B..... ▲

The feed and litter carriers manufactured or sold by complainants are operated on overhead tracks. The litter carriers range in value from \$13.60 to \$50, the feed carriers from \$14.80 to \$50, the values varying according to the size and shape of the suspended box or receptacle and the construction of the metal gear parts which run along the rail. It is urged that, considering weight, size, and value, the litter carriers should be rated second class and the feed carriers third class. For the purposes of comparison, complainant selected a litter carrier valued at \$13.60, weighing 176 pounds, and measuring 28 cubic feet, and a feed carrier valued at \$14.80, weighing 200 pounds, containing 23 cubic feet. A lower rating is asked for feed carriers than for litter carriers because less in size for substantially the same weight and value. There are 7 types of litter carriers and 17 types of feed carriers shown in complainant's price list, but the two types compared are said to be the most popular. It is not shown in what respect these two types differ from the other types or varieties manufactured by complainant, nor that they are representative of the various types of feed or litter carriers moving in the general territory involved. A member of complainant's firm stated that he was unfamiliar with the carriers manufactured by its competitors. Complainant compared the relative value per 100 pounds of the two carriers described with the value of various other articles, including riding plows, walking plows, hay loaders, grain binders, and manure spreaders, which take lower ratings under the western classification. No attempt was made, however, to show that the conditions governing the transportation of the articles cited are substantially the same as for feed and litter carriers, and value, though important, is not the controlling element in classification, *National Hay Asso. v. M. C. R. R. Co.*, 19 I. C. C., 34. Comparisons were also made between the ratings on feed and litter carriers in western, official, southern, Illinois, and Iowa classifications, but ineffectually we think, as there is no fixed relationship between the ratings in the different classifications.

As we have held before, particular ratings in one classification are not conclusive proof that higher ratings in another are unreasonable.

A representative of complainant stated that the prescribed carload minimum of 24,000 pounds, subject to rule 6-B, applicable to feed or litter carriers, could easily be complied with. The same witness had so informed the Uniform Classification Committee in April, 1913, and the record shows that other manufacturers of feed and litter carriers in the same general territory find no difficulty in loading to that minimum. Feed and litter carriers can be loaded to a weight that will break down the car. Complainant suggests the impossibility of being able to load 24,000 pounds of litter carriers, but that contention is without merit for the reason that no carload movement is shown.

Complainant's contention that rule 6-B should be eliminated from the items in the classification naming the carload mixtures in issue is also without merit. Complainant argues that it is unusual to apply rule 6-B in connection with minima of 24,000 and 30,000 pounds; that it is not applied in connection with agricultural implements, and that it should apply only when the minimum is 20,000 pounds. As just stated, 24,000 pounds can conveniently be loaded into a standard car, and the application of the rule tends to conserve equipment.

Complainant is especially interested in securing a provision permitting the mixture of these articles in carloads with agricultural implements.

It had been decided in the *Western Classification case*, 25 I. C. C., 442, 552, that—

Under No. 51 feed or litter carriers have been segregated, given a separate item, and have not been included under the heading of agricultural implements. Had feed or litter carriers been placed under the heading of agricultural implements they would have been accorded lower ratings and minima in certain commodity tariffs, and would have been accorded certain mixing and stoppage in transit privileges.

Feed or litter carriers are not implements and tools used exclusively in tilling the soil or in harvesting the crops. They are found in the city as well as on the farm. There are, however, a number of articles in the agricultural implement list of No. 51 the use of which is not restricted to farming. Among such articles may be mentioned corn shellers, pea hullers, barrel carts, traction engines, hay carriers, cane mills, and combined corn and cob mills. Feed or litter carriers are of the same general construction as hay carriers.

It is shown in the record that feed or litter carriers are handled largely by agricultural implement dealers, and it is a common practice to ship them in cars with agricultural implements.

Feed or litter carriers should either be included in the agricultural implement list or should be provided with a carload rating and minimum of 20,000 pounds identical with agricultural implements, with a proper notation to the effect that they may be mixed with agricultural implements, and that, when shipped in straight carloads, at the agricultural implement rating, they shall enjoy all privileges accorded agricultural implements.

The carriers were unwilling to abide by our decision in this matter, and, after exhaustive investigation, the Committee on Uniform Classification recommended the provisions here assailed to the official, southern, and western classification committees. This action, as hereinafter appears, was evidently founded upon their purpose to limit the list of agricultural implements to articles which are used in preparing the soil or in planting, harvesting, or storing the crops.

Complainant contends that feed and litter carriers are used principally for agricultural purposes; that they are of the same general character and construction as hay carriers and are as essential to farmers as hay carriers, pea hullers, manure spreaders, cane mills, barrel carts, corn shellers, and other articles classified as agricultural implements in the western classification; that in a great many instances customers can not buy litter or feed carriers in straight carloads and that the right to mix them with agricultural implements between seasons would give farmers the advantage of carload rates. Complainant adds that they are shipped with agricultural implements and are handled by the same dealers, but so are many other articles which are not classified as agricultural implements, and which do not mix with them. No attempt was made to establish the contention that stalls, stanchion frames, and stanchions are agricultural implements, other than by general allegations to that effect. Defendants contend that feed and litter carriers, stalls, stanchion frames, and stanchions are barn equipment and that the present classification provisions for mixtures and minima meet the demands of manufacturers and of the trade generally. Practically all the articles in the agricultural implement list cited by complainant in comparison are shown to be used either in preparing the soil or in planting, harvesting, or storing the crops, the real criterion, defendants assert, of classification as agricultural implements. Thus traction engines, such as are manufactured by implement dealers, known largely as farm engines or farm tractors, are used principally for plowing, harrowing, reaping, or other farm purposes; corn shellers in the same manner as threshers, or separators, except those used in elevators or mills, which move with flour or mill machinery in mixed carloads. Barrel carts are shown to be used largely on truck farms, for handling water during the planting season; pea hullers for threshing peas from the vines or pods; manure spreaders for preparing the soil for planting; cane mills for extracting the juice from the cane, just as a thresher is used for separating grain from straw, while hay carriers are used either for stacking the hay in the fields or for transporting it to the barns. None of these articles, moreover, are shown to be used for the same purposes as feed or litter carriers, or to compete with feed or litter carriers in any way.

An extensive variety of overhead conveyors, analogous to feed or litter carriers, is manufactured for use in transporting ice, milk cans, or merchandise. All these types of carriers are rated the same in the western classification, and defendants argue that any reductions in the ratings on feed and litter carriers without simultaneous reductions in the ratings on other types of conveyors would unduly prefer feed and litter carriers, and that to grant the carload mixture sought would be to accord complainant a substantial benefit with a corresponding disadvantage to other concerns engaged in a similar line of business who ship only barn equipment.

While we held in the *Western Classification case, supra*, that the mixture of feed and litter carriers with agricultural implements in carloads should be permitted, that proceeding involved hundreds of issues, and it was impossible to give the ratings and classification requirements on each commodity the same consideration as they would have received upon a specific record. In this connection the following language in the case cited is pertinent:

Where the number of changes, however, is as great as is involved in this one proceeding, it is apparent that no body of men can, in a relatively short time, give such consideration to each item as will enable them to express their conclusions with reference to each with that degree of confidence as to their correctness as would be desirable. While the record is full and apparently complete in regard to many items, there are numerous others with reference to which there is no direct testimony nor other evidence; and we wish to state at the outset that we shall hold ourselves in readiness to modify any of the conclusions or suggestions herein expressed just as soon as sufficient reliable information making such modifications just and proper may become available.

Upon all of the facts of record, we find that the rating provisions for mixtures and minima complained of are not unreasonable or otherwise in violation of the act, and the complaint will be dismissed.

An appropriate order will be entered.

24 I. O. O.

No. 5764.

BASCOM-FRENCH COMPANY ET AL

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

Submitted February 16, 1914. Decided June 14, 1915.

Rate of 34 cents per 100 pounds for the transportation of lumber and articles taking the lumber rate in carloads from Texas and Louisiana producing territory to Las Cruces, N. Mex., found unreasonable to the extent that it exceeds 28 cents per 100 pounds. Reparation denied.

R. B. Daniel for complainants.

Robert Dunlap, J. L. Coleman, and F. H. Wood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the Bascom-French Company and the Las Cruces Lumber Company, corporations, and the Bradford Lumber Company, a copartnership composed of W. R. Bradford and R. P. Porter, all three engaged in the lumber business at Las Cruces, N. Mex. By complaint, filed May 7, 1913, they attack as unreasonable and unjustly discriminatory the rate of 34 cents per 100 pounds charged by defendants for the transportation of lumber and articles taking the lumber rate from producing points in eastern Texas and Louisiana to Las Cruces. Reparation is asked and a rate of 28 cents for the future.

Las Cruces is a local point on the Atchison, Topeka & Santa Fe Railway, 44 miles north of El Paso, Tex. Prior to March 9, 1911, there was no joint rate on lumber from the producing points involved to Las Cruces through El Paso. A proportional rate of 18 cents was in effect to El Paso on lumber destined to points in New Mexico, Arizona, and Mexico, and a local rate of 16 cents from El Paso to Las Cruces, making a combination through rate of 34 cents. The Atchison, Topeka & Santa Fe was not a party to the 18-cent proportional rate to El Paso, but published a through rate of 34 cents from the points of origin involved to Las Cruces by way of Belen, N. Mex. In the autumn of 1910 Bascom-Porter Company, the predecessor of Bascom-French Company, filed a complaint attacking the 16-cent local rate of the Atchison, Topeka &

Santa Fe from El Paso to Las Cruces, which was found unreasonable to the extent that it exceeded 10 cents per 100 pounds, *Bascom-Porter Co. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 297. Pending the decision in that case the 18-cent proportional rate from the producing territory involved to El Paso was canceled for all destinations beyond El Paso, except points in Mexico, but effective March 9, 1911, a joint rate of 34 cents was established to Las Cruces through El Paso. The local rate from the producing points involved to El Paso is 25 cents. A rate of 29 cents applies to Deming, N. Mex. Deming is located 88 miles northwest of El Paso and is served by the Southern Pacific Company, the El Paso & Southwestern, and the Atchison, Topeka & Santa Fe. When the rate assailed was established the rate to Deming was increased from 29 cents to 34 cents, but the increase was condemned upon complaint and hearing. *Deming Lumber Co. v. S. P. Co.*, 24 I. C. C., 598. Complainants contend that the rate assailed is unreasonable and unjustly discriminatory in comparison with the rates from the same points to El Paso and Deming.

Lumber from the producing territory involved to Deming does not move through Las Cruces, so that there is no violation of section 4 of the act with respect to the lower rate to Deming than to Las Cruces. Lake Charles, La., may be taken as a representative point of origin. From Lake Charles the 25-cent rate to El Paso yields 5.14 mills per ton-mile, the 29-cent rate to Deming 5.47 mills, the 34-cent rate to Las Cruces 6.37 mills. The 28-cent rate asked to Las Cruces would yield 5.51 mills per ton-mile from Lake Charles. Deming, El Paso, and Las Cruces compete, and no justification appears for rates to Las Cruces not related reasonably to the rates to El Paso and Deming. The 25-cent rate to El Paso involves a haul of 973 miles from Lake Charles.

Upon all of the facts of record we find that the rate assailed is, and for the future will be, unreasonable to the extent that it exceeds 28 cents per 100 pounds.

Complainants bought the lumber constituting the shipments on which reparation is asked upon a delivered basis at destination. The delivered price was based upon the mill price, with an amount added based upon the estimated freight charges. Complainants, however, deducted the actual freight charges from the invoices and thereby charged them back to the consignors. In *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302, where lumber was bought on a similar basis, we held that the consignees were not entitled to reparation. Following that case, we hold that complainants are not the real parties in interest and are not entitled to reparation.

An order will be entered accordingly.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 550.
RATES ON STONE AND MARBLE, CARLOADS, NOT POLISHED, LETTERED, OR FIGURED, FROM CHICAGO AND PEORIA, ILL., TO ST. PAUL, MINN.

Submitted May 13, 1915. Decided June 14, 1915.

Proposed increased rates on stone and marble, not polished, lettered, or figured, from Chicago and Peoria, Ill., to St. Paul, Minn., found to have been justified for stone and marble, sawed or dressed, but not for rough stone and marble. Order of suspension vacated in part.

O. W. Dynes, C. C. Wright, W. F. Dickenson, A. P. Humburg, James B. Sheean, A. H. Lossow, R. B. Scott, and W. H. Bremner for respondents.

Lightner & Young for Drake Marble & Tile Company, C. H. Young Company, and Northwestern Marble & Tile Company, protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves the commodity rate on stone and marble, not polished, lettered, or figured, from Chicago and Peoria, Ill., to St. Paul, Minnesota Transfer, and Minneapolis, Minn., and neighboring points to which the St. Paul rate is applied. The present rate is 8 cents per 100 pounds. By tariff schedules filed to take effect December 1, 1914, a rate of 10 cents was proposed. Upon protest by stone and marble workers located at St. Paul the schedules were suspended until September 30, 1915.

The description given applies to stone and marble of all sizes and shapes, which means, in effect, rough, sawed, dressed, or broken blocks. The average values at Chicago of the different grades produced range from \$3.50 per ton for marble spawls or chips to \$34 per ton for rough imported or Italian marble blocks. Sawing or dressing enhances these values by from \$20 to \$30 per ton, depending on the degree of finish. Spawls and rough blocks move in flat and gondola cars, sawed and dressed marble in box cars.

The present rate has been in effect for many years. The increase proposed is the result of a protest made to the carriers in 1911 by certain stone contractors at St. Paul, who urged that the 8-cent rate should be limited to rough blocks, with sawed and dressed blocks on the classification basis, or that the rate on rough blocks should be

reduced. The carriers, without attempting to comply with the protest, proposed to increase the rate to 10 cents.

Protestants do not object to the increase in its application to dressed and sawed stone and marble, but insist that the application of the same rate to rough stone and marble as to finished stone and marble articles is both unreasonable and unjustly discriminatory. They assert that about 40 per cent of the rough blocks received is waste, and that the ability of their competitors at Chicago or at the quarries to ship sawed and dressed blocks at the rates paid by protestants on rough blocks places protestants at a disadvantage. The lower value of rough blocks and their movement in flat or gondola cars is emphasized, and the contention made that the car earnings are high in comparison with the car earnings on other commodities. Although protestants generally receive their material from New York City and from Vermont, Tennessee, and Indiana at joint rates, not here involved, they do purchase rough stone, marble chips, and the like in Chicago and Peoria and therefore are directly interested in the rates in issue.

The western classification rates marble, granite, jasper, and onyx blocks, rough quarried, carloads, minimum weight 36,000 pounds, class E. The class E rate from Chicago to St. Paul is 13 cents. The present and proposed commodity rate applies on a minimum carload of 40,000 pounds. Protestants assert that their inbound shipments of rough stone and marble average between 70,000 and 80,000 pounds per car; their outbound shipments of dressed marble, from 36,000 to 40,000 pounds per car, which accords substantially with averages of actual weights ranging from 43,350 to 71,305 pounds per car submitted by some of the respondents.

An average of 220 pounds of rough marble in the block is required to produce 1 cubic foot of dressed marble weighing approximately 170 pounds; 200 pounds of rough Bedford stone to produce 1 cubic foot of sawed and dressed stone weighing approximately 140 pounds. There is approximately 30 per cent waste, although the spawls from marble blocks are of some value for terrazzo flooring.

Protestants insist that the commodity description of stone and marble is unreasonable and subjects them to undue prejudice. They pay about \$56 per car of 70,000 pounds on shipments of rough stone and marble from Chicago to St. Paul, while their competitors who saw and dress similar stone or marble at Chicago and ship the product from that point pay about \$39.20 per car of 49,000 pounds. Sawed and dressed stone and marble must be loaded in box cars, detain the carrier's equipment longer, are more liable to damage, and require more care in transportation than rough stone and marble, and protestants argue that the increases, if any, should be confined to

sawed and dressed stone and marble. Witnesses for respondents agreed that the rate on sawed and dressed stone and marble should be higher than that on rough stone and marble.

Upon all the facts of record we find that respondents have not justified the increased rates proposed on rough stone and marble, not sawed, dressed, polished, lettered, or figured, from Chicago and Peoria, Ill., to St. Paul, Minnesota Transfer, and Minneapolis, Minn., and neighboring points to which the St. Paul rate is applied, but have justified the rates proposed on stone and marble, sawed or dressed.

An order will be entered requiring the cancellation of the proposed increased rate on rough stone or marble, not sawed or dressed, and vacating the orders of suspension as to the rate on stone or marble, sawed or dressed, effective September 1, 1915.

84 I. C. C.

No. 6886.

MONTROSE & DELTA COUNTIES FREIGHT RATE ASSOCIATION

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted January 4, 1915. Decided June 18, 1915.

Rates on classes and certain commodities from Missouri River points and points east thereof to Montrose, Olathe, Delta, Hotchkiss, and Paonia, Colo., not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

***M. D. Vincent, C. J. Moynihan, and F. A. Jones* for complainant.**

***A. P. Anderson* for Public Utilities Commission of the state of Colorado.**

***J. G. Mc Murry* for Denver & Rio Grande Railroad Company.**

***C. H. Morehouse* for Atchison, Topeka & Santa Fe Railway Company.**

REPORT OF THE COMMISSION.

HALL, Commissioner:

The Montrose and Delta Counties Freight Rate Association is a voluntary association with a membership of some 200 persons, organized "to secure more equitable freight rates and better transportation service" for the communities represented by it. In this proceeding it attacks as unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act, defendants' rates on classes and certain commodities from Missouri River points and points east thereof to Montrose and Olathe in Montrose county, and to Delta, Hotchkiss, and Paonia in Delta county, all in the state of Colorado. The five destinations are local points on the line of the Denver & Rio Grande Railroad. Montrose was selected by complainant as typical of the other destinations and will be so used in this report. The Public Utilities Commission of Colorado intervened in support of the complaint.

The burden of the defense was borne by the Denver & Rio Grande Railroad Company, which will be referred to as the defendant.

Two related complaints were also filed by complainant. These are docketed as Nos. 6887 and 6888, and are reported at pages 400 and 409 of this volume.

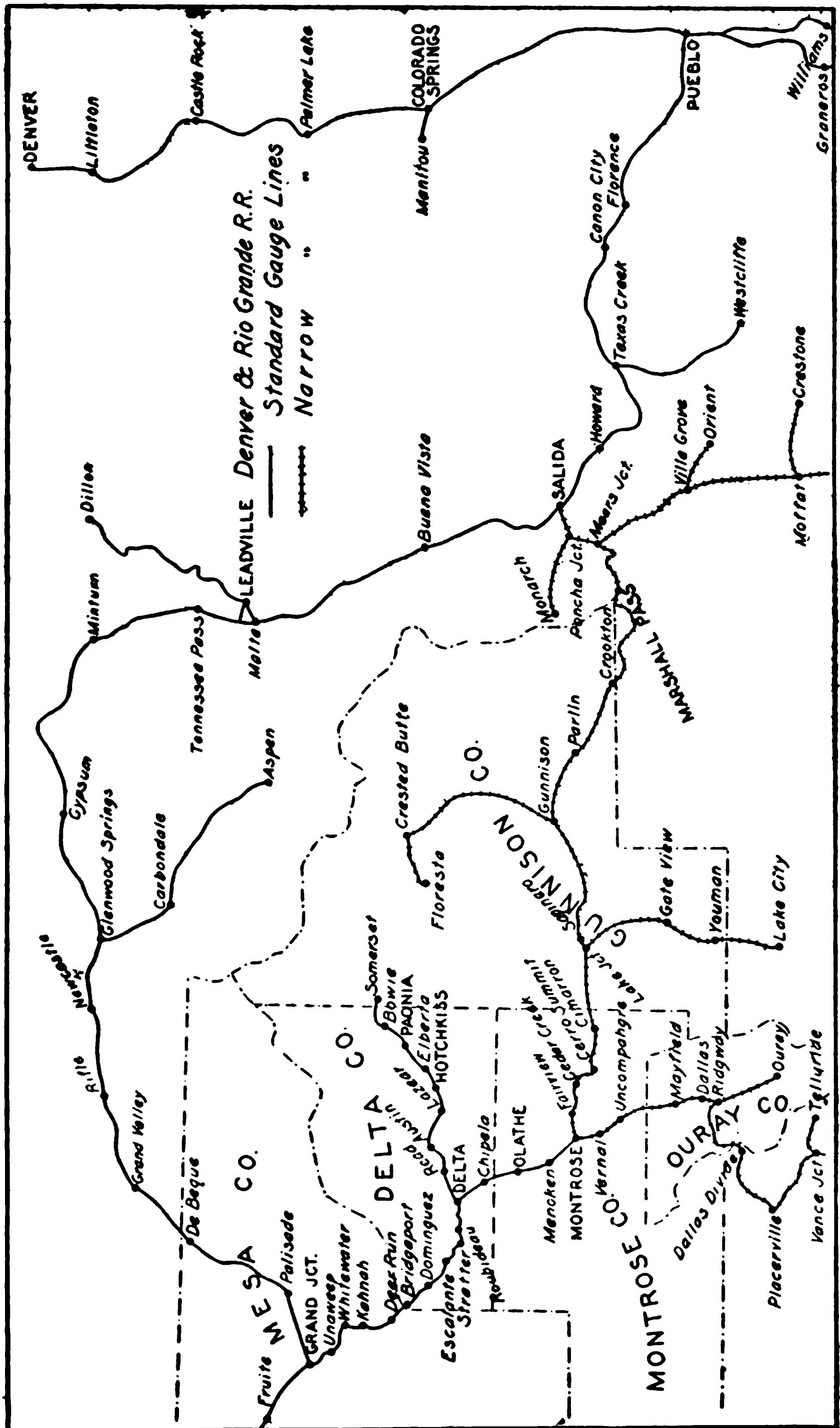
The accompanying map, which is reproduced with slight changes from an exhibit filed of record, shows a part of defendants' lines in Colorado. It has two lines from Salida to Grand Junction; one, narrow gauge, over Marshall Pass to Montrose and thence standard gauge through Delta; the other over Tennessee Pass and through Glenwood Springs, which is standard gauge throughout. The route via Marshall Pass antedates the other by some years. Prior to the completion of the second line all westbound traffic from points east of Salida was transported over the Marshall Pass route on which Montrose is intermediate to Grand Junction. Rates to Montrose and Grand Junction on shipments westbound from Missouri River points and territory east thereof were the combinations based on Pueblo and were in almost every instance the same.

The later opening of the route via Tennessee Pass altered the manner of transporting through shipments, and such shipments have moved over this route since it became available. Freight from points east of Salida to destinations on the narrow-gauge line is transferred at Salida to the narrow-gauge cars and moves over Marshall Pass to destination.

The points selected by complainant as representative are all on the standard-gauge line. Shipments destined to them from east of Salida move over Tennessee Pass through Glenwood Springs and Grand Junction.

Although the haul by this route is longer, it obviates the transfer of freight at Salida. The supply of standard-gauge cars is more abundant than that of narrow-gauge cars, and from an engineering standpoint the factors of grade, maximum curvature, total curvature, and rise and fall all favor the standard-gauge route. More engine and train crews are required to transport a given amount of freight over the narrow-gauge than over the standard-gauge route. The maximum grade is 1.42 per cent, and the maximum curvature 12 degrees 40 minutes via the standard-gauge route, while over the narrow gauge they are, respectively, 4 per cent and 25 degrees 30 minutes. These conditions result in lower operating expenses via the Tennessee Pass route.

In making rates from Missouri River points to Utah common points the defendant and its connections meet the competition of the Union Pacific Railroad. Voluntary reductions in the rates of the latter company, as well as reductions prescribed by the Commission for these carriers in *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, compelled reductions in defendant's rates to Salt Lake City and other Utah common points which it was unwilling to equalize at Grand Junction and certain other intermediate points



on its line. Accordingly it filed application for relief from the long-and-short-haul rule of section 4 of the act. Shortly thereafter complaint was made of this situation by the Grand Junction Chamber of Commerce. Both proceedings were disposed of by the Commission in one report, *Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co.*, 23 I. C. C., 115, wherein the carrier's application for permission to charge higher rates at intermediate points than were contemporaneously in effect to more distant points on its lines was denied as to all westbound traffic originating at the Missouri River, the Mississippi River, Chicago, and similar rate territory. The effect of this decision was to accord to Grand Junction on such traffic a rate basis not in excess of that contemporaneously in effect at Salt Lake City.

The five points of destination specified in the complaint are not intermediate to Grand Junction via the route used for through shipments from the Missouri River and eastern territory. Defendant has never considered the rates on such shipments to Grand Junction reasonably remunerative and has declined to extend them to points not directly intermediate.

Rates to these five destinations are constructed by combination on Pueblo, except that where the combination based on Grand Junction results in a lower rate the lower combination thus obtained is used in every case. In making its rate comparisons complainant selected St. Louis, Mo., as a representative point of origin. The following table shows the short-line distances, and the class rates in effect at the time of the hearing, from St. Louis to the destinations specified. The distance to Montrose is that over the standard-gauge line via Tennessee Pass and through Grand Junction. All rates shown in this report are stated in cents per 100 pounds.

From St. Louis, Mo., to—	Short-line distance.	Classes.									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>										
Pueblo, Colo.....	870	162	127	101	80½	63	74	56	50	42	36
Grand Junction, Colo.....	1,190	227	189	163	134	111	111	88	80	57	48
Salt Lake City, Utah.....	1,418	227	189	163	134	111	111	88	80	57	48
Winnemucca, Nev.....	1,258	206	230	183	162	136	139	108	89	82	74
Reno, Nev.....	1,432	200	242	202	171	143	146	114	91	86	78
San Francisco, Cal.....	2,150	230	298	238	200	168	172	125	106	102	92
Montrose, Colo.....	1,272	262	234	202	166½	128	124	104	96	72	66

Below are shown carload rates in effect at the time of the hearing from St. Louis to various points on certain commodities selected by complainant as typical of the rate situation, together with the short-line distances:

Commodities.	From St. Louis to—				
	Pueblo (870 miles).	Grand Junction (1,199 miles).	Montrose (1,272 miles).	Salt Lake City (1,418 miles).	San Francisco (2,159 miles).
Agricultural implements, wagons, etc.....	82½	110	140	110	125
Bags and bagging.....	51	82	92	82	85
Canned goods.....	63	86	116	86	90
Cotton piece goods ¹	110	150	205	150	160
Pipe, steel or wrought.....	45	58	88	58	65
Paper, news or wrapping.....	50	72	102	72	75
Soap.....	62	77	107	77	80
Nails.....	58	67	97	67	70
Furniture, bedroom.....	85	117½	157½	117½	163

¹ Dry goods made wholly of cotton.

On January 19, 1915, we decided *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551. In that proceeding certain proposed increased class and commodity rates from Missouri River points and Mississippi River points, Chicago, and intermediate territory on the one hand and Utah common points on the other hand were found to have been justified. Following this decision the carriers increased the rates to Grand Junction to the basis of those applicable to Salt Lake City.

The present class rates from St. Louis are as follows:

To—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Salt Lake City.....	247	205	176	143	116	120½	94	81	59	49
Grand Junction.....	247	205	176	143	116	120½	94	81	59	49
Montrose.....	302	250	206	155½	123	134	104	95	72	66

It will be noted that rates on classes 1, 2, and 3 are now higher to Montrose than at the time of the hearing. On the other hand it appears that the ratio between the class rates, taken as a whole, from St. Louis to Montrose and to Salt Lake City is now lower than at the time of the hearing. That is, the average of these class rates to Montrose was then 146.85 cents, or 121.6 per cent of the average to Salt Lake City; while such average to Montrose is now 150.75 cents, or 116.2 per cent of the average to Salt Lake City.

There has also been an increase in the rates on some of the commodities specified. The present rates from St. Louis are:

Commodities.	To Montrose.	To Grand Junction.	To Salt Lake City.
Agricultural implements, wagons, etc.....	142½	117½	117½
Bags and bagging.....	95	85	85
Canned goods.....	120	90	90
Cotton piece goods.....	173	118	118
Pipe, steel or wrought.....	94	64	64
Paper:			
News.....	105	75	75
Wrapping.....	109	79	79
Soap.....	115	85	85
Nails.....	104	74	74
Furniture, bedroom.....	157½	117½	117½

Complainant claims that the various class and commodity rates attacked should be on a basis somewhere between that applicable to traffic from the Missouri River and eastern territory to Pueblo and that upon such traffic to Salt Lake City. The grounds for this are largely the relative distances; evidence indicating that transportation from Grand Junction to Montrose is less expensive to the carrier than that to Salt Lake City; the fact that the rates to Montrose were at one time substantially the same as those to Grand Junction; the fact that Montrose was at one time intermediate to Salt Lake City; and a prevalent opinion among the witnesses for complainant that the present rates are relatively unreasonable and discriminatory.

Montrose and the other destinations represented by complainant are local points upon branch lines of defendant. So far as traffic from the Missouri River and eastern territory is concerned, they are not intermediate to Grand Junction or Salt Lake City. The rates to Grand Junction are not rates voluntarily established by defendant, but are held down to the basis of those to Salt Lake City and other Utah common points. *Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., supra.* In the *Salt Lake City case, supra*, in prescribing rates from Missouri River points via all lines, including that of defendant, the Commission was largely influenced by the cost of handling the business over the short and easy line, that of the Union Pacific. Of the defendant it was said, page 221:

The Denver & Rio Grande is situated, for the most part, among the mountains. Its cost of construction was high, and the expense of operation is much greater than that of the Union Pacific. * * * The Denver & Rio Grande was built for the purpose of handling the local business tributary to its line. No railroad would ever have been built where this one is for the main purpose of handling through business like that under consideration. To-day its branch lines aggregate two and one-half times the mileage of its main line, over which this traffic passes. The great bulk of its tonnage to-day is from local business. Its line is longer than that of the Union Pacific between all points.

Essentially, complainant's contention that rates from the Missouri River and eastern territory to destinations in Montrose and Delta counties should be measured by those to Salt Lake City, Pacific coast terminals, etc., and be somewhat lower than those applicable to Salt Lake City, is a request to apply to local branch-line points a rate basis applied to other points not by voluntary action of the defendant, but by order of the Commission or by force of competition.

The record discloses no similarity between the transportation and traffic conditions incident to transportation to Salt Lake City and those attendant upon transportation to Montrose.

In *Moore v. D. & R. G. R. R. Co.*, 25 I. C. C., 1, rates of \$2.23 and \$2.24½ per 100 pounds for the transportation of furniture in carloads from Burlington, Iowa, a point taking the Mississippi River rate basis, to Hotchkiss, Colo., one of the destinations selected by complainant herein, were attacked as unreasonable and unjustly discriminatory. The complainant in the *Moore case* relied upon a comparison of distances. The Commission said, pages 3 and 4:

The essence of the complaint in this case is that the rates charged are unreasonable and also unduly discriminatory as compared with the third-class rate of \$1.63 applicable on furniture from Mississippi River points to Salt Lake City, Utah. * * * Complainant specifically contends that it is unreasonable *per se* to charge more for hauling a car to Hotchkiss, only 76 miles beyond Grand Junction, than is charged for the haul to Salt Lake City. * * * Upon all the facts of record in this case * * * we can not find that, under the circumstances and conditions then obtaining, the rates charged on complainant's shipments were unjust or unduly discriminatory. * * * It now results from the decision in *Fourth Section Application No. 960, supra* (*Grand Junction case*), that complainant will have a somewhat lower basis of rates for the future based on the combination over Grand Junction.

The complaint was dismissed.

There is evidence in the record concerning the general conditions obtaining in Montrose and Delta counties; the various reclamation projects designed to develop this region; and a lack of prosperity during the last few years. Evidence was also introduced bearing upon the financial condition of defendant. Neither is helpful in disposing of the issues herein. *Northbound Rates on Hardwood*, 32 I. C. C., 521, 529; *I. C. C. v. U. P. R. R. Co.*, 222 U. S., 541, 549.

Complainant asserts that the rates under attack are unnecessarily complicated. It is fundamental that the publication of rates should be simplified in every way possible. But this question is not in issue; and the fact that a rate is difficult to compute can have no weight in determining whether or not it is reasonable in amount.

Many of the rates under attack have been in effect for a number of years. With the exception of the increases made after this case was submitted, changes since January 1, 1910, have been made as reductions and not increases. Upon the record we conclude that the rates assailed have not been shown to be unreasonable or unjustly discriminatory. No violation of section 4 is shown.

The complaint will be dismissed.

No. 6887.
**MONTROSE & DELTA COUNTIES FREIGHT RATE ASSO-
CIATION**
v.
DENVER & RIO GRANDE RAILROAD COMPANY ET AL

Submitted January 4, 1915. Decided June 18, 1915.

1. Rates on apples, deciduous fruit, potatoes, onions, and other vegetables from points in Montrose and Delta counties, Colo., to destinations in the east not shown to be unreasonable or unjustly discriminatory.
2. Upon the record herein the Commission is not prepared to require the establishment of rates on low-grade apples in bulk from Montrose and Delta counties to various destinations in the east lower than the rates on apples in packages contemporaneously in effect between the same points, but the question is of sufficient importance to merit further consideration by the defendants.
3. Charges for the refrigeration of shipments set forth above found not unreasonable.

M. D. Vincent, C. J. Moynihan, and F. A. Jones for complainant and Chamber of Commerce of Grand Junction, Colo.

A. P. Anderson for Public Utilities Commission of the state of Colorado.

E. N. Clark and J. G. McMurry for Denver & Rio Grande Railroad Company.

H. A. Johnson for Colorado & Southern Railway Company and Fort Worth & Denver Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainant herein is a voluntary association composed of residents of Montrose and Delta counties, Colo. It alleges that defendants' rates for the transportation of apples, fresh fruit, potatoes, onions, and other vegetables from Montrose, Olathe, Delta, Hotchkiss, and Paonia, Colo., to various destinations east of Colorado are unreasonable and excessive; that the charges exacted for the refrigeration of such shipments are unreasonable and excessive; and that defendants' failure to publish and maintain rates on apples in bulk, thus requiring shippers to enclose apples in containers, is unreasonable and unjust. The Public Utilities Commission of Colo-

rado and the Chamber of Commerce of Grand Junction, Colo., intervened in support of the complaint.

The complaint is supplemented by two others, brought by the same complainant, which are docketed as numbers 6886 and 6888 and are reported in this volume at pages 393 and 409. The points of origin referred to are shown on the map at page 395 of this volume.

A witness for complainant testified that the records of the county clerk of Montrose county show the following carload shipments from that county in the years specified:

	1911	1912	1913
Apples.....	312	378	378
Peaches.....	8	13	0
Potatoes.....	1,005	1,425	1,357
Beets.....	428	613	554
Onions, grain, flour, honey, etc.....	417	334	280

In its brief complainant states that the rates in issue are those on carload shipments of potatoes and onions, apples in packages, apples in bulk, and deciduous fruit, as well as the refrigeration charges on such shipments.

The record indicates that attacks upon specific rates were, in a number of instances, prompted by erroneous information as to the amount of such rates or of those with which comparisons were made. It is unnecessary to consider these in detail.

RATES ON APPLES.

The present rates for the transportation of apples and fresh fruit in carloads from the points of origin specified are as follows, all rates here and throughout this report being stated in cents per 100 pounds unless otherwise specified:

To—	Apples.	Fresh fruit.
Boston, Mass., Baltimore, Md., New York, N. Y., and Philadelphia, Pa.....	100	115
Pittsburgh, Pa.....	92½	115
Cleveland, Ohio.....	99½	112½
Columbus, Ohio.....	88	111½
Fort Wayne, Ind.....	85½	109
Cincinnati, Ohio.....	85	107½
Duluth, Minn.....	75	95
St. Paul, Minn., and common points.....	75	95
Chicago, Ill.....	75	100
Mississippi River common points.....	70	90
Missouri River common points.....	60	80
Texas common points.....	75	105
Oklahoma City, Okla., and related points.....	75	100

These rates also apply to traffic from Grand Junction, Colo., and other shipping points of the western slope of Colorado.

In lieu of the rates shown above complainant suggests as reasonable the following rates:

To—	Apples.	Fresh fruit.
Points east of Chicago.....	80	100
St. Paul and common points.....	65	80
Chicago.....	65	85
Mississippi River common points.....	55	75
Missouri River common points.....	47	75
Texas common points.....	75	95
Oklahoma City and related points.....	60	80

The evidence bearing upon rates on apples in packages is meager. Witnesses for complainant were of the opinion that such rates to Missouri River points were too high as compared with rates from New York to the same territory; and that the rate from Montrose to New York was too high as compared with the rate from California to New York. Comparative transportation conditions were not shown.

The complaint attacks as unreasonable defendants' failure "to publish and maintain rates on apples in bulk." Subsequent to the filing of the complaint, defendants published, effective July 7, 1914, the same rates on bulk apples from Montrose to all destinations as are applicable to apples in packages. This is a literal compliance with the terms of the complaint. At the hearing, however, it developed that complainant wished to secure rates on low-grade apples in bulk lower than those on package apples to enable the producers to market low-grade apples at present unavailable for commercial use. It seems to be practically impossible to dispose of them under the existing rates and, as a rule, if used at all, they are made into cider or fed to hogs.

In the western classification apples in carloads are rated fifth class both in packages and in bulk.

So far as is shown by the record there are no interstate rates on apples in bulk lower than the corresponding rates on apples in packages. It appears that in Iowa there are published each year, effective from August 1 to December 1, low intrastate rates on "windfalls and culls" in bulk. Reference is also made to some similar intrastate rates in Colorado, but their nature and the extent of their application are not shown.

At one time the Denver & Rio Grande maintained a rate on bulk apples from Montrose territory to Pueblo and Denver lower than the rate on apples in packages. It was found that apples shipped under the low rate were boxed at destination and sold in competition with those shipped at the higher rate. Complaints were made by the shippers themselves, and the lower rate was withdrawn under special permission from the Colorado Railroad Commission.

It is shown that apples move for the most part in refrigerator cars, although it was testified that under favorable weather conditions box cars could be used. The shipments move by fast freight.

The evidence in this proceeding does not show that the rates on apples from points of origin in Montrose and Delta counties to destinations east of Colorado are unreasonable or unjustly discriminatory. Nor does this record warrant an order requiring the defendants to maintain rates on low-grade apples in bulk lower than the present rates on apples whether in packages or in bulk.

But this question of bulk apple rates is of sufficient importance to merit further consideration. Off-grade apples, or, as they are popularly known, "culls," constitute a substantial portion of the annual crop. In the Montrose-Delta territory the culls permitted to rot on the ground, or fed to hogs, or made into cider, would amount in each year to several hundred carloads. And what is true of the orchards there must be true of other fruit-growing sections. There is in this condition an economic waste, a loss of sales to the grower, a loss of tonnage and revenue to the carriers, and a loss to would-be consumers whose needs or purses do not permit the purchase of graded or selected apples. The traffic official of the Rio Grande recognized this condition, and, as we read his testimony, is desirous of assisting the complainants to market their culls, and, incidentally, of securing for the carriers additional tonnage and revenue. But this, it appears, will require the cooperative action of other defendants looking to the establishment of lower rates on cull apples than now apply on boxed or bulk apples. Despite instances of abuse in the past, it would seem feasible to so condition the rates and police the traffic as to practically obviate abuses in the future.

DECIDUOUS FRUIT.

Throughout the record the terms "deciduous fruit," "green fruit," and "fresh fruit" were used interchangeably as applicable to fresh or green fruit, other than apples, from deciduous trees; and it appears that all of these terms are used in the various tariffs carrying such rates. The statement compiled from the records of the county clerk of Montrose county and set forth above shows that the volume of such fruit shipped from that county is comparatively small.

Several exhibits were introduced by defendants showing the rates on deciduous fruits from the five points of origin in Montrose and Delta counties to Texas common points, and similar rates on deciduous green or fresh fruits, according to the description in the tariffs. The rates are shown from Colorado common points, Utah common points, Sacramento, Cal., and Portland, Oreg., to Texas common points, and are accompanied by a statement of the relative distances and ton-mile earnings.

Greeley, Colo., and Ogden, Utah, were selected as typical of Colorado and Utah common points, respectively. The distances are based upon an average of the short-line mileage to 21 representative Texas common points. From the Montrose and Delta territory the distance is measured via the standard-gauge line, over which the traffic moves. The average revenue from the points named to Texas common points is shown as follows, in cents per ton-mile, and the average distances in miles:

To Texas common points from—	Average distance.	Ton-mile revenue.
	Miles.	Cents.
Montrose, etc.....	1,175	1.884
Greeley.....	981	1.843
St. Louis.....	776	2.234
Ogden.....	1,574	1.379
Sacramento.....	2,318	1.079
Portland.....	2,145	1.088

It will be observed that although the haul from Montrose and vicinity is nearly 200 miles longer than from Greeley, the ton-mile revenue is higher. But included in the longer haul is some 300 miles of movement from the western to the eastern slope of the Rocky Mountains, across the continental divide. The remaining haul is not unlike that from Greeley.

As was said in *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551, the rule that ordinarily the per ton-mile yield should decrease with distance has full application only where the conditions of haul are substantially similar.

These shipments move exclusively in refrigerator cars. At the season of movement to Texas no northbound lading can, as a rule, be secured for such cars; it is moved as fast freight; and it is of a highly perishable nature, rendering the carriers liable for heavy damage claims. Complainant has failed to show that the present rates are unreasonable or unjustly discriminatory.

POTATOES, ONIONS, AND OTHER VEGETABLES.

Evidence as to the rates on potatoes, onions, and other vegetables from Montrose and Delta counties was confined almost entirely to rates to destinations in Texas. It does not appear that vegetables other than potatoes and onions move from the Montrose region to Texas.

Potatoes are shipped to Texas principally from Colorado, Utah, Idaho, California, Oregon, Washington, Michigan, and Wisconsin. Texas common points are divided into north and south groups for the purpose of making rates on potatoes, onions, and other vegetables from Colorado, Utah, and Idaho, the points in northern Texas tak-

ing rates 4 cents lower from the same points of origin than points in southern Texas.

Complainant contends that the rates from Montrose are relatively unreasonable as compared with those from Greeley, Colo.

The rates on potatoes from the various producing regions to Texas are interrelated. Thus, the Greeley district takes the same basis as St. Louis, 58 cents to Texas common points, except to certain points in northern Texas, such as Fort Worth, Dallas, Sherman, etc., to which the rate from Greeley is 54 cents, 4 cents lower than from St. Louis. The Montrose, Grand Junction, and Carbondale, Colo., districts take rates 5 cents in excess of those from Greeley, while from Utah common points and a large portion of Idaho the rates are 10 cents higher than from Greeley. Other points in Idaho are a differential above the Utah common points rates. California, Oregon, and Washington are on an arbitrary basis. Michigan and Wisconsin are on an arbitrary basis over St. Louis. Defendants assert that beyond question shippers from the other districts would insist upon the maintenance of the present differential relation in case the rates from Montrose were reduced.

It is shown that it is impracticable to move the traffic from Montrose over the narrow-gauge line, and that the distance over the standard-gauge road from Montrose exceeds that from Greeley by about 200 miles. It was further testified that the rates from the entire western slope of Colorado to practically all destinations in the east are on a basis 5 cents higher per 100 pounds than from Greeley to the same destinations.

From some of the producing districts the rates on potatoes and onions are lower than on other vegetables. Exhibits introduced by defendants show the rates, average short-line distances, and average ton-mile earnings from various producing territories to 21 representative Texas common points. Below are shown the average short-line distances in miles and the resulting average ton-mile revenue in cents thus computed:

From—	Distance.	Revenue on potatoes and onions.	Revenue on other vegetables.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Montrose, etc.....	1,175	1.085	1.118
Greeley.....	981	1.211	1.258
St. Louis.....	776	1.528	1.528
Ogden.....	1,574	.864	.949
Idaho Falls.....	1,639	.826	.907
Sacramento.....	2,143	.709	.891
Portland.....	2,318	.654	.775

Contrary to the usual rule, the ton-mile earnings on this traffic from Greeley and St. Louis are higher than on that from points in

Montrose and Delta counties, although the distance from the former points is less. Potatoes and other vegetables move from St. Louis to Texas common points on a commodity rate of 58 cents, the same in amount as the class C rate, which would apply in its absence. Class rates from St. Louis to Texas common points were prescribed by the Commission in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463.

These potatoes are carried, as a rule, in refrigerator cars. Owing to their greater weight, these cars are more expensive to handle than ordinary freight cars. There is no northbound lading for such cars at the time the shipments move. There is no disagreement as to the perishable nature of potatoes and their susceptibility to injury from heat or cold. Fast freight is required. Free storage in transit is accorded, as well as liberal reconsignment and diversion. Upon the record there is no showing that defendants' rates for the transportation of potatoes, onions, and other vegetables are unreasonable or unjustly discriminatory.

REFRIGERATION.

There remains for consideration the allegation that defendants' charges for the refrigeration of apples, fresh fruit, and vegetables are unreasonable and excessive.

Apples from Montrose and Delta counties are accorded what is known as half-tank refrigeration. Cars used for such refrigeration are equipped with a device for raising the ice grates from the bottom to the center of the bunkers. The ice occupies the space from the center to the top of the bunkers. There is little evidence concerning this half-tank refrigeration. Such as there is does not indicate that the carriers' charges are unreasonable.

Defendants introduced the following exhibit, showing the actual expenses incurred in connection with the refrigeration of the 98 carloads of deciduous fruit moving from Montrose and Delta counties under refrigeration during the calendar year 1913:

To—	Refrigeration (per car).	Cars.	Total refrigeration.	Cost of ice.	Overhead expense. ¹	Cleaning. ¹
South Dakota, Wisconsin, Minnesota, Illinois.....	\$47.50	36	\$1,710.00	\$902.90	\$173.70	\$7.49
Missouri (Kansas City), Kansas, Nebraska.....	40.00	9	360.00	215.88	38.43	1.87
Texas, Louisiana, Connecticut, Massachusetts.....	60.00	32	1,920.00	1,071.79	136.64	6.66
Iowa, Missouri (St. Louis).....	45.00	5	225.00	145.02	21.35	1.04
New York, Indiana, District of Columbia, Philadelphia, New Jersey.....	55.00	12	660.00	403.91	51.24	2.49
Pittsburgh.....	50.00	4	200.00	108.26	17.08	.83
Total.....		98	5,075.00	2,847.76	438.44	20.38

¹ Overhead expense, \$4.27 per car; cleaning, 20.8 cents per car; wear and tear on bunkers, \$5 per car; freight on ice in bunkers, \$14.01 per car.

To—	Wear and tear on bunkers. ¹	Freight on ice in bunkers. ¹	Total expense.	Net earnings.	Net loss.	Net loss (per car).
South Dakota, Wisconsin, Minnesota, Illinois.....	\$180.00	\$504.36	\$1,768.45	.....	\$58.45	.....
Missouri (Kansas City), Kansas, Nebraska. Texas, Louisiana, Connecticut, Massachu- setts.....	45.00	136.09	437.27	.....	77.27	.....
Iowa, Missouri (St. Louis).....	160.00	448.32	1,823.41	\$96.59	.....	.....
New York, Indiana, District of Columbia, Philadelphia, New Jersey.....	25.00	70.05	262.46	.....	37.46	.....
Pittsburgh.....	60.00	168.12	685.76	.....	25.76	.....
	20.00	56.04	202.21	.....	2.21	.....
Total.....	490.00	1,382.98	5,179.56	.....	104.56	\$1.06

¹ Overhead expense, \$4.27 per car; cleaning, 20.8 cents per car; wear and tear on bunkers, \$5 per car; freight on ice bunkers, \$14.01 per car.

It was stated that at the time of the hearing some re-icing in connection with these cars was still unreported and therefore not shown in the exhibit. The overhead expense shown consists only of the district office expense and does not include any part of any general expense such as car repairs, depreciation, or renewals, loss and damage of freight, general office expenses, advertising, insurance, taxes, and interest, etc. Nor is any allowance made for the switching necessary in connection with the re-icing of cars en route.

The item for cleaning covers only the actual cost of the labor and does not include the cost of materials. The items for wear and tear on the bunkers and freight on ice in bunkers were estimated in accordance with statements made in our report in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C. 106, at 109, 110, and 120.

With regard to the last item complainant urges that no allowance should be made for hauling the ice because that service is rendered by the railroad company as distinguished from the refrigerator company. In passing upon this same contention in the *Arlington Heights case, supra*, the Commission said, page 109:

While this argument is a fair one upon its face, it is, in reality, without merit. The railroad company is responsible for both the transportation and the refrigeration service. It may, if it deems best, furnish the refrigeration by contract with some independent agency, but it still stands responsible to the public.

See also *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17, at pages 20 and 24.

The carriage of this ice is certainly a source of expense and, unless included in the transportation rate, which is not shown to be the fact, is a part of the cost of refrigeration. *Atchison Railway Co. v. U. S.*, 232 U. S., 199, 220; *Railroad Commission of California v. A. G. S. R. R. Co., supra*.

Several comparisons were given between the refrigeration charges on deciduous fruit from the western slope of Colorado and those on

such fruit from other territory. The rates from Colorado are in dollars per car without regard to minimum, while those from California are based upon a minimum weight of 26,000 pounds and from the other districts mentioned of 20,000 pounds:

From—	To Illinois.	To Nebraska.	To New York.
Western slope.....	\$47.50	\$40.00	\$55.00
California.....	75.00	70.00	87.50
Arkansas.....	55.00	50.00	62.00
Louisiana.....	55.00	52.00	65.00
			70.00
	55.00	55.00	75.00
	55.00	55.00	75.00
Texas (4 groups).....	65.00	65.00	85.00
	67.50	67.50	90.00
	77.00	77.00	100.00

In order to handle with dispatch this perishable freight it is necessary to make certain preparations in advance of the movement. Arrangements must be made for securing ice and other supplies. The cars must be assembled before the movement begins. During the month of July, 1914, the Denver & Rio Grande paid \$15,800 as rental for refrigerator cars lying idle along its line awaiting load. A few days before the hearing that company had 3,150 empty refrigerator cars on its line. Refrigerator cars for the most part are moved to the assembling points empty. During August, 1913, the Denver & Rio Grande moved westbound 1,637 refrigerator cars, over 80 per cent of which were empty. Of the remainder, some were handled loaded only a part of the way. The Denver & Rio Grande estimates that it costs \$25.69 per car from Denver, and \$18.88 per car from Pueblo, to move a train of 25 empty refrigerator cars to Grand Junction.

In *Refrigeration Charges on Fruits and Vegetables*, 29 I. C. C., 653, a proposed refrigeration charge of \$40 per car on shipments of fruits and vegetables from stations in Colorado to all points of destination in the state of Kansas was under consideration. The Commission said, page 658:

The \$40 charge proposed in the suspended tariff compares favorably with other icing charges approved by this Commission, and so far as we can judge from the present record it appears to be a reasonable one.

The refrigeration charges under attack herein are not unreasonable. An order will issue dismissing the complaint.

No. 6888.

**MONTROSE & DELTA COUNTIES FREIGHT RATE
ASSOCIATION**

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted January 4, 1915. Decided June 18, 1915.

Rates on classes and certain commodities from Los Angeles and San Francisco, Cal., and related points, to Delta, Olathe, Montrose, Hotchkiss, and Paonia, Colo., not shown to be unreasonable or unjustly discriminatory. Complaint dismissed.

M. D. Vincent, C. J. Moynihan, and F. A. Jones for complainant and Chamber of Commerce of Grand Junction, Colo.

A. P. Anderson for Public Utilities Commission of the state of Colorado.

E. N. Clark, J. G. McMurry, and Fred Wild, jr., for Denver & Rio Grande Railroad Company.

H. A. Johnson for Fort Worth & Denver Railway Company.

C. H. Morehouse for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

This is a companion case to Nos. 6886 and 6887, pages 393 and 400. Complainant is a voluntary association composed of certain residents of Montrose and Delta counties, Colo. The complaint assails as unreasonable and unjustly discriminatory defendants' rates on classes and certain commodities from Los Angeles and San Francisco, Cal., and related points, to Delta, Olathe, Montrose, Hotchkiss, and Paonia, Colo., local points on a branch line of the Denver & Rio Grande. The Public Utilities Commission of Colorado and the Chamber of Commerce of Grand Junction, Colo., intervened in support of the complaint.

The destinations referred to are shown on the map at page 395 of this volume.

Class rates to the five destinations specified above are constructed by adding to the rate from point of origin to Grand Junction, Colo., the local rates from there to the various destinations. The class rates

from San Francisco and Los Angeles to Grand Junction are, in cents per 100 pounds:

From—	Distance.	Classes.									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>										
San Francisco	1,104	250	215	175½	145	125	110	92	82	76	68½
Los Angeles	960	250	215	175½	145	125	110	92	82	68	61½

Class rates from Grand Junction are as follows:

To—	Distance.	Classes.									
		1	2	3	4	5	A	B	C	D	E
	<i>Miles.</i>										
Delta	51	44	38	33	27	24	24	18	15	13	13
Olathe	62	50	41	36	31	27	27	23	17	15	15
Montrose	73	55	45	40	35	30	30	26	19	18	18
Hotchkiss	76	58	49	44	40	34	34	30	22	19	19
Paonia	84	60	53	47	43	37	37	33	24	21	21

From either San Francisco or Los Angeles the first-class rates to these destinations are as follows, per 100 pounds: Delta, \$2.94; Olathe, \$3; Montrose, \$3.05; Hotchkiss, \$3.08; Paonia, \$3.10.

In support of the attack upon class rates to Montrose and Delta territory complainant makes various rate comparisons which show, it contends, that upon a mileage basis the rates to Montrose and the other destinations are excessive. Comparisons are made, for example, with rates from California terminals to Leadville, Aspen, and Denver, Colo., and Salt Lake City, Utah. It also appears that the line from Grand Junction to Montrose presents less difficult operating conditions than that from Grand Junction over the continental divide to Pueblo.

On behalf of the Denver & Rio Grande it was testified that the rates from California terminals to Denver and other Colorado common points are compelled by competition with the Union Pacific Railroad. The first-class rate from San Francisco and Los Angeles to Denver and other Colorado common points and to Leadville and Aspen is \$2.60 per 100 pounds. Leadville and Aspen are on branch lines of the Denver & Rio Grande and are not intermediate to Colorado common points within the meaning of the act to regulate commerce. The Denver & Rio Grande endeavors to explain this by stating that giving the main-line rate to Aspen on eastbound traffic from the Pacific coast was an error. On westbound traffic to Aspen that point takes an arbitrary over the main-land rate. No explanation was offered regarding Leadville other than that it was considered as

intermediate territory. Both Leadville and Aspen are served by one or more carriers in addition to the Denver & Rio Grande. The customary basis for constructing rates to points on branches of the Denver & Rio Grande is to add to the rate to the main-line junction the local rate, or an arbitrary, to destination. The record does not convince us that the conditions surrounding transportation to the points selected for comparison are similar to those attaching to the carriage to Montrose and Delta territory. The present record does not show that destinations represented by complainant are prejudiced by the lower rates to Aspen and Leadville.

Below are shown, in cents per 100 pounds, the rates set forth in the complaint which are alleged to be unreasonable for the transportation from Los Angeles and San Francisco of the commodities specified, in carload or less-than-carload lots, as indicated:

Commodity.	To Delta.	To Olathe.	To Montrose.	To Hotchkiss.	To Paonia.
Bags, burlap or gunny.....C. L..	80	101	180	110	113
Refined petroleum.....C. L..	100	112	115	119	122
Sugar.....C. L..	99	102	105	109	112
Canned goods.....C. L..	109	112	115	119	122
Baking powder.....L. C. L..	203	211	215	219	223
Canned goods.....L. C. L..	177	181	185	190	193
Blankets and robes.....L. C. L..	204	210	215	218	220
Clothing.....L. C. L..	244	250	255	258	260
Fish, dried, smoked, salted, or pickled.....L. C. L..	152	156	160	165	168
Leather, harness, etc.....L. C. L..	153	156	160	164	168
Leather, kip, etc.....L. C. L..	204	210	215	218	220
Tea.....L. C. L..	194	200	205	208	210
Paper.....C. L..	99	102	105	109	112
Do.....L. C. L..	158	161	165	169	172
Soap.....C. L..	104	107	110	114	117
Do.....L. C. L..	157	161	165	170	173
Lumber.....	47½	63	47½	70	73
Box shooks.....	45	.....	45	.....	.....

The instances in which the present rates differ from those shown above are:

Commodity.	To Delta.	To Olathe.	To Montrose.	To Hotchkiss.	To Paonia.
Bags, burlap or gunny.....C. L..	80	80	80	80	80
Sugar, minimum carload 36,000 pounds.....C. L..	84	87	90	94	97
Canned goods.....C. L..	105	110	110	115	117
Baking powder.....L. C. L..	203	206	210	214	217
Fish, dried, smoked, salted, or pickled.....L. C. L..	172	176	180	185	188
Leather, kip, etc.....L. C. L..	194	200	205	208	210
Lumber.....C. L..	46½	46½	46½	48½	50½
Box shooks.....C. L..	45	45	45	45	45

At the time this case was heard there was pending an application on behalf of certain carriers asking permission to depart from the long-and-short-haul rule of the fourth section to the extent of continuing rates on sugar from San Francisco and from beet-sugar producing points in California, Utah, and Arizona to destinations on

and east of the Missouri River lower than the rates concurrently applicable on like traffic to intermediate stations.

The decision of the Commission upon this application was rendered in *Fourth Section Violations in Rates on Sugar*, 31 I. C. C., 511. We there said, pages 513, 514, and 515:

The rates from San Francisco on the Western Pacific increase with distance until the station Gerlach, Nev., is reached. The rates to that point are 55 and 60 cents per 100 pounds on the carload minima named above. These rates are blanketed to all stations east of that point up to and including what are known as Utah common points. To territory in Colorado from Grand Junction to Canon City on the Denver & Rio Grande a rate of 75 cents is applied with a carload minimum of 36,000 pounds. At Pueblo and other Colorado common points the rates are 55 and 60 cents, and these rates are blanketed to all territory from Colorado common points to and including Missouri River points. * * * The route of the Western Pacific and Denver & Rio Grande is longer than that of its competitor to Denver. Its line is also less advantageously located, running through an extremely mountainous section of country with severe grade, curvature, and climatic conditions. The rates made to the Colorado common points, however, are blanketed to a territory 600 miles in width extending from these points to the Missouri River, and the rates to all the territory east of the Missouri River up to Chicago are but 65 cents for the 36,000-pound minimum. Under these circumstances a rate of 75 cents to these local Colorado points between Grand Junction and Canon City more than 1,000 miles west of Chicago can not be justified, and the application of the carriers with respect to these rates will be denied.

An order was entered denying the application, effective November 15, 1914.

Rates on sugar from California terminals to the destinations in Montrose and Delta counties are made by combination on Grand Junction. As a result of our order in *Fourth Section Violations in Rates on Sugar, supra*, these rates have undergone a uniform reduction of 15 cents per 100 pounds to each of the five destinations in question. Upon the present record the Commission is not warranted in requiring further reductions in these rates.

The rates upon lumber and upon box lumber or box shooks are also attacked. There was very little evidence regarding the rates on lumber. That relating to box lumber or box shooks, in which complainant was principally interested, shows that the greater portion of the supply is secured from Oregon.

In *Lamb-Davis Lumber Co. v. G. N. Ry. Co.*, 31 I. C. C., 341, it was alleged that a rate of 60 cents per 100 pounds for the transportation of pine box shooks in carloads from Leavenworth, Wash., to Paonia, Hotchkiss, and Austin, Colo., was unreasonable and unjustly discriminatory to the extent that it exceeded 45 cents. We found that the rate was unreasonable to the extent that it exceeded 46 cents per 100 pounds. The rates on lumber and box lumber from San Francisco and Los Angeles to the five representative destinations are not shown to be unreasonable.

The testimony submitted by complainant indicates that most of the paper used in this territory originates in Wisconsin, particularly at Green Bay. The evidence fails to show that the present rates on paper from San Francisco and Los Angeles are unreasonable.

The rate on bags from San Francisco and Los Angeles to Grand Junction and to Colorado common points is 70 cents. These are secured from various points, New York, New Orleans, Seattle, and Los Angeles being those mentioned. In *Boyle Commission Co. v. W. P. Ry Co.*, Unreported Opinion No. A-327, the Commission found unreasonable a rate of \$1.10 per 100 pounds on burlap bags in carloads from San Francisco to Montrose and prescribed in lieu thereof a maximum rate of 95 cents. The present rate to all five destinations is 80 cents. Upon the record it does not appear that the rate on bags is unreasonable.

Evidence regarding the alleged unreasonable rates on other commodities was restricted almost entirely to an exhibit showing rates from Los Angeles and San Francisco to Montrose as contrasted with rates to Colorado common points, Utah common points, Grand Junction, and other points. Nothing was shown as to volume of traffic, competitive conditions, or other attendant circumstances. Upon this showing no finding of unreasonableness can be made as to any of these rates.

The findings herein are without prejudice to any action which may be taken upon pending applications for relief from the provisions of section 4 of the act.

The complaint must be dismissed.

34 I. C. C.

No. 5919.
ALPHA PORTLAND CEMENT COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

No. 5920.
SAME
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted April 17, 1914. Decided June 14, 1915.

1. Rate of \$2 per gross ton for the transportation of bituminous slack coal in carloads to Martins Creek, Pa., from mines in the Fairmont region of West Virginia and in the Westmoreland region of Pennsylvania, not found to be unreasonable or unjustly discriminatory.
2. The requirement of a differential between slack and other sizes of bituminous coal not found to be justified.

L. H. Porter and Archibald Cox for complainant.

W. A. Parker for Baltimore & Ohio Railroad Company and others.

G. S. Patterson for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation engaged in the manufacture and sale of portland cement, with plants at Martins Creek, Pa., and Alpha, N. J., points in the Lehigh cement district, and at Manheim, W. Va., and Catskill, N. Y. It complains in Nos. 5919 and 5920, respectively, of a rate of \$2 per gross ton for the transportation to Martins Creek of bituminous slack coal from mines on lines of the Baltimore & Ohio Railroad Company in the Fairmont region of West Virginia and of the Pennsylvania Railroad Company in the Westmoreland region of Pennsylvania, alleging that said rate is unreasonable and subjects complainant to undue prejudice and disadvantage in competing with manufacturers of cement located at Allentown, Pa., and other points in the Lehigh district which have a rate of \$1.95 per gross ton. In addition it asks that a differential in rates be established between slack and other grades of bituminous coal, the rates asked being \$1.45 and \$1.65 per gross ton, respectively. Reparation is asked on approximately 400,000 tons. The two cases were consolidated for hearing and will be disposed of together.

The Lehigh cement district is in eastern Pennsylvania and northwestern New Jersey and includes about 20 plants, which mine a narrow deposit of cement rock extending irregularly east and west for a distance of approximately 40 miles. The combined capacity of these plants is approximately 40,000,000 barrels of cement annually, but the output during the last several years has been a little over 60 per cent of capacity. Complainant's total annual consumption of coal in its two Martins Creek plants is 200,000 tons, of which it purchases 175,000 in the Fairmont and the balance in the Westmoreland region, and it estimates that the annual consumption in the Lehigh district by cement plants is 2,500,000 tons and by all industries 4,000,000 tons. On this bituminous coal traffic the Lehigh district is divided into three groups, Martins Creek being in the one taking the highest rate. This division will be referred to hereinafter in considering the allegation of unjust discrimination.

From the Fairmont region Martins Creek is reached by several five-line routes, the delivering carriers being the Lehigh & New England and Delaware, Lackawanna & Western railroads. The route referred to most generally is via the Baltimore & Ohio to Cumbo yards, near Martinsburg, W. Va., an average haul from all Fairmont mines of 206 miles; the Cumberland Valley to Shippensburg, Pa., 50 miles; the Philadelphia & Reading to East Penn Junction, Pa., 132 miles; the Lehigh Valley to Stockertown, Pa., 26 miles; and the Lehigh & New England to destination, 9 miles; a total of 423 miles.

From the Westmoreland region the Pennsylvania delivers direct to one of complainant's plants at Martins Creek, this being the only plant in the Lehigh district served directly with its own rails. The short-line route to the Lehigh district, however, is intrastate, through either Mount Carmel, Nanticoke, or Harrisburg, Pa. The distance to Martins Creek from Hermanie, where complainant purchases coal, is 358 miles via the intrastate and 415 miles via the interstate route. The average distance from all mines would be somewhat greater.

There is an established relationship in rates between the various bituminous coal regions east of the Ohio River, and for more than 20 years rates to the east have been the same from the Fairmont and Westmoreland regions. The mines on the Pennsylvania Railroad extend in a southwesterly direction, the Clearfield, Latrobe, Greensburg, Westmoreland, and Pittsburgh regions adjoining in the order named. Rates from Clearfield to the east are the same as those from the Georges Creek, Cumberland, Somerset, Austin-Newberg, and Meyersdale regions on the Baltimore & Ohio, and the Upper Potomac region on the Western Maryland Railroad, while rates to the east from the Latrobe region are the same as, and rates

from the Greensburg, Westmoreland, and Pittsburgh regions are higher by differentials of 10, 25, and 40 cents, respectively, than those from Clearfield.

Complainant's efforts to show unreasonableness in the Martins Creek rate consisted largely of estimates of cost of service and comparisons with rates on lake cargo and tidewater coal and with rates in other sections of the country. It should be noted at the outset that there is no contention by complainant that rates to the Lehigh district are unduly high as compared with the general adjustment to the east, it being argued that all bituminous coal rates to that section are much too high, and that a reduction such as is asked would necessitate a general readjustment to points east of Harrisburg, and this presumably from all regions. To line points in the east the Baltimore & Ohio during the year ended June 30, 1913, handled from its West Virginia mines approximately 4,000,000 tons of bituminous coal, and from other regions east of the Ohio River 3,500,000 tons, in addition to which it transported approximately 7,500,000 tons to tidewater piers. The bituminous coal tonnage originating on or moving via the Pennsylvania to the east during 1912 was over 29,000,000 tons.

Two estimates of cost of service are submitted in each case, one of which, as described by complainant—

does not depend at all upon any observation of this particular traffic and makes no direct assignment of actual cost, but is confined wholly to a statistical assignment of average costs based exclusively upon an analysis of the official reports filed by the several carriers with the Commission—

and the other is based on personal observation of such costs as it is possible to observe and the use of percentages applicable to all traffic over the respective carriers.

By the first method the annual cost to the various carriers defendant of maintenance of way and structures and of equipment, and the annual transportation and general expenses, are allocated between freight and passenger traffic, and, after eliminating such costs as are chargeable to less-than-carload traffic and only slightly related to the movement of coal, an allocation is made between road haul and switching. The sums so arrived at for each road are divided, the one by the total number of loaded car-miles and the other by the approximated total number of cars requiring switching. To illustrate, the average car-mile cost so figured on the Pennsylvania Railroad is 5.9399 cents. It is assumed that the cost of moving cars is the same irrespective of weight of load, and in view of the fact that on the Pennsylvania system the empty car movement is 54.56 per cent of the loaded car movement, whereas on this coal traffic it is substantially 100 per cent, this estimate is increased to 7.6862 cents, which, based on the

average coal loading of the Pennsylvania, 41.9 gross tons, is the equivalent of 1.83 mills per gross ton-mile. The cost of switching is figured to be \$1.7757 per car, or 4.23 cents per gross ton. The total cost to Martins Creek, figured on the basis of 420 miles, is estimated to be 94.75 cents per gross ton. On the same basis, but using the average loading to complainant's Martins Creek plants of 41.6 gross tons, the cost from Fairmont, over the five-line route described, is estimated to be \$1.1087.

The method described is not represented to be as accurate as the other, which is based on personal observation by complainant's traffic manager of such transportation costs in connection with this traffic as it was possible to observe, and the assumption that the costs which it was impossible to observe are the same percentage of the total transportation cost of this traffic as corresponding costs on all traffic over the rails of each of the carriers are to its total transportation cost; further, that the transportation cost so found is the same percentage of the operating cost as the total transportation cost of all traffic over each carrier is to its total operating cost. To illustrate, in the case of the Baltimore & Ohio the costs observed by complainant's traffic manager for the haul from the mines to Cumbo yards were first estimated to be \$6.77 per car. Certain items of transportation were eliminated as not being present in the movement of coal, and such items as were not eliminated and were not susceptible of observation complainant found constituted on all traffic 22.15 per cent of the total transportation cost of the Baltimore & Ohio. It therefore assumes that \$6.77 is 77.85 per cent of the total transportation cost of this traffic, and that the total transportation cost so found is 50.61 per cent of the total operating cost, that being the percentage as to all traffic on the system. The figure so obtained is \$17.17 per car. In its brief, based on defendants' testimony, complainant revised its estimate of observed cost to \$7.30, this amount including an arbitrary allowance of 10 cents per car for the services of station employees. In making its new estimate, however, complainant used percentages of observed to total transportation cost (71.167) and of total transportation to total operating cost (49.76) on the main line instead of on the whole system, and in addition added 10.366 to the percentage of observed transportation cost, that being the percentage of cost of station employees to total transportation cost, and so figured the total operating cost is \$17.99. It will be noted that by making the allowance of 10 cents per car for station employees complainant has added over 10 points to the percentage of observed transportation costs. This figure of \$7.30 is not represented by complainant to be more than approximately accurate, and it is interesting to note that if it be assumed to be \$1 too low the total operating cost would be increased \$2.47. Complainant's original total

estimate of cost over the five-line route described from Fairmont to Martins Creek is 88.93 cents and its revised estimate 93.6 cents per gross ton, the latter being equivalent to 2.2 mills per gross or 1.99 mills per net ton-mile.

The Baltimore & Ohio submitted an estimate of observed costs from the mines to Cumbo yards for five days in February and five days in July, 1913, of \$9.56. This carrier contends that the coal traffic should bear its proportionate share of cost of station employees and places that item in the column of unobserved costs, and by using the same percentages as complainant in its revised estimate, except as changed by the item named, figures the total operating cost to Cumbo yards to be \$27. Its total estimate of operating cost per car to Martins Creek, based on the theory of computing cost used by complainant, is \$50.17, which divided by 41.6 gives \$1.20 per gross ton.

There were numerous differences of opinion by the respective parties as to the cost over various portions of the route or of particular services, but as to these it would not be practicable, in a consideration of this case, to go into great detail.

Complainant's original estimate of operating cost from the Westmoreland region to the plant served directly by the Pennsylvania is \$26.42 per car, or 63 cents per gross ton. This was later increased to \$27.166 per car, 65 cents per ton and (using the distance of 420 miles) 1.55 mills per gross or 1.4 per net ton-mile.

It is contended by complainant that a fair allowance for profit would be 50 per cent of total operating cost, which in the case of coal from Fairmont region to Martins Creek (based on complainant's figures) would be \$1.42 per gross ton. It asks, in fact, for rates of \$1.45 on slack and \$1.65 on other grades of bituminous coal.

Complainant's estimates of cost appear low in comparison with those in the *West Virginia Lake-Coal case*, 22 I. C. C., 604, and in *Boileau v. P. & L. E. R. R.*, 22 I. C. C., 640. In the former, in which was involved the reasonableness of proposed increased rates on lake cargo coal from West Virginia, the Commission said that no nearer or more precise finding could be made than that the cost of moving coal, including gathering and return of empties, over the Norfolk & Western Railway from Bluefield, W. Va., to Columbus, Ohio, an average distance of 300 miles, was about 2 mills a net ton-mile. In the *Boileau case*, *supra*, which involved the reasonableness of rate of 88 cents per net ton for an average weighted distance of 148 miles from the Pittsburgh district to Ashtabula Harbor, Ohio, the Commission stated that the operating expense was probably less than half of 88 cents and ordered the establishment of a rate of 78 cents, the latter being equivalent to 5.9 mills per gross ton-mile. It should be borne in mind that the lake cargo tonnage considered in

these cases is heavy and moves only during the season of open navigation, when the transportation of coal for domestic uses is lightest. In the *Boileau case*, it was found, also, that the movement of this coal started at about the same time as the movement of ore from the lakes to Pittsburgh and that as a consequence there was substantially no empty return movement.

From the Fairmont region the current rate yields revenue on coal moving to Martins Creek of 4.75 mills per gross ton-mile, while under the rate on slack asked the revenue would be 3.42 mills. This, it should be remembered, is over a five-line route. The delivering carriers, as is customary in cases where they have a haul of but a few miles on long-haul traffic, receive an arbitrary allowance—in this case 40 cents per gross ton—and the remainder of the rate is prorated on a mileage basis, the division of the Baltimore & Ohio being 73 cents for a haul of approximately 206 miles to Cumbo yards.

The Pennsylvania, as stated, reaches one of complainant's Martins Creek plants with its own rails and its other plant by a short switching service for which it absorbs charges of \$1.80 per car, but to other points in the same group it has to allow out of the \$2 rate divisions of from 40 to 65 cents. It is admitted by complainant that rates to the Lehigh district from the Fairmont and Westmoreland regions must be the same and that it would not be fair to base a rate to Martins Creek on estimates of cost via the one-line route of the Pennsylvania, as the natural route from Westmoreland mines to other points in the district would be through Mount Carmel or Nanticoke, via which routes the transportation conditions are not so favorable and the cars subject to more handling. It does not appear of record what percentage of this traffic is handled via the interstate route, but it would seem probable that a considerable portion moves interstate to points in the \$2 group and but little to points in the Bethlehem group.

Complainant makes comparisons with average earnings on all traffic per train, car, and ton mile, and contends that the coal traffic bears more than its fair share of the transportation burden. In view, however, of the increases recently approved by this Commission in *The Five Per Cent case*, 31 I. C. C., 351, and 32 I. C. C., 325, in class and commodity rates generally except on coal, ore, and certain other low-grade traffic, a discussion of these comparisons, for what they might ordinarily be worth, would not be profitable.

As stated, the complaint in effect challenges the whole adjustment of bituminous coal rates to the east and it does not appear that the rate to Martins Creek is out of line with this adjustment. The rate of \$2 applies to Trenton, N. J., 359 miles from Hermanie, and to points intermediate on the Pennsylvania between Trenton and Mar-

tins Creek; also to points intermediate to Camden, N. J., on the line of the Pennsylvania on the eastern bank of the Delaware River. The rate to Jersey City, 468 miles from the Fairmont region and 415 miles from Hermanie, is \$2.10, while to Philadelphia, 400 miles from the Fairmont region and 350 miles from Hermanie, the rate is \$1.85 per gross ton. To New York the tidewater rates from Fairmont and Westmoreland are \$1.80 and \$1.85 per ton, dependent upon the pier, and to Philadelphia the rates are \$1.50 when for reshipment beyond the capes, and \$1.60 when for points within the capes. Competitive conditions are substantially different on tidewater coal, and a comparison with tidewater rates furnishes no basis for a finding of unreasonableness in rates to line points.

In determining the reasonableness of rates, cost of service is one of several factors to be considered, and, while carriers are not entitled to receive more than a reasonable rate on any traffic, in cases where it appears that the rate challenged is in harmony with a general adjustment between a large number of producing regions and an extensive consuming territory consideration must be given not only to the accuracy of cost estimates, but to the probable effect of a substantial reduction on the main body of rates. Complainant's estimates of observed cost may be reasonably accurate, but its total operating cost estimates are, after all, approximations based on general averages of the various carriers which may or may not be correct on the particular traffic in question and they do not, of course, take into consideration the comparative values of the lines traversed and equipment used and of all lines and equipment of the carriers defendant. These estimates, which are elaborate and represent much labor, may be the most complete that can be furnished in advance of a complete valuation of the properties of the carriers, but we do not feel justified upon the showing made thereby in making a finding of unreasonableness in the rate challenged.

The complainant testified as to the declining prosperity of the cement industry in the Lehigh district and stated that only a reduction in the rate of freight on coal will enable manufacturers in this district to operate their plants on a reasonable margin of profit. It further testified that the cost of freight on coal, which in the case of its plants constitutes 26 per cent of the cost of manufacture, is the principal difference in the cost of manufacture in the various cement-producing sections. It appears, however, that owing to the increasing production in practically every section of the country the territory within which Lehigh district and other long established plants can sell at a fair profit has been decreasing in size from year to year until it might fairly be said that cement traffic is becoming more and more a local proposition. These, however, are commercial conditions which

the Commission has stated in a number of cases that it can not attempt, in the exercise of powers conferred upon it by the act it administers, to overcome or modify. The customs duty on cement, which for years had been 32 cents per barrel, has recently been removed. The carriers, however, can not be required to offset by rate adjustments the effect of a customs policy declared by the Congress.

The question of discrimination involves plants in the Lehigh district. Evansville, Pa., the least distant point from either Fairmont or Westmoreland, takes a rate of \$1.85, while to Allentown, Bethlehem, Coplay, Northampton, and other Pennsylvania points in a group extending west and north from Bethlehem and east and north of Evansville, the rate is \$1.95. The group in which Martins Creek is located is east of the \$1.95 group and extends into New Jersey, including Alpha, at which point, it will be recalled, complainant has a plant.

Complainant's contention is that in view of competition between the various Lehigh district plants and the fact that rates on every commodity except coal entering into the manufacture of cement is the same to, and rates on cement to practically all except near-by points are the same from, all points in this district, the adjustment of coal rates results in undue prejudice and disadvantage. The defendants, on the other hand, contend that the grouping is natural and proper, both the distance and the number of carriers necessary to perform the service increasing with the rate.

The fact that on one commodity moving outbound several points constitute a single group is pertinent in considering the reasonableness of an adjustment on another commodity moving inbound under which such points are divided into two or more groups, but such a showing is not convincing, even though it appear that the second commodity is used largely in the manufacture of the first, in the absence of proof of substantial similarity of conditions, transportation and otherwise, surrounding their movement, for it might be that competition has influenced the establishment of an adjustment on the one which it would not be just to the carriers to require on the other.

From the Fairmont region the average distance is 352 miles to Evansville, via a three-line haul; the average distance to the \$1.95 group is 383 miles, and the routes are generally composed of four lines; to the \$2 group the average distance is 402 miles, and it is necessary to use the lines of from four to six carriers. From the Westmoreland region the short-line routes to Martins Creek and to the points alleged to be unduly preferred are intrastate, and there is considerable difference between the interstate distance to the former and the intrastate distance to the latter.

Upon consideration of all of the facts of record we are of opinion that the present adjustment of rates on bituminous coal from the Fairmont and Westmoreland regions is not shown to be unreasonable or to subject complainant to undue prejudice and disadvantage.

The remaining question is that of a differential between slack and other sizes of bituminous coal, complainant's contention being based on difference in value and the impracticability of storing slack coal. It has not been the custom of carriers in this section to maintain such a differential, and in view of the fact that the loading of slack is substantially lighter than that of other varieties of bituminous coal and that it is coming more and more into demand due to the increasing use of mechanical stokers, there appears to be neither commercial nor transportation necessity for requiring its establishment. Difference in value, which it appears has decreased somewhat in the past few years, would not, in our opinion, justify it.

In view of the conclusions above expressed the complaints will be dismissed, and it will be so ordered.

34 I. C. C.

No. 7427.
KANSAS CITY LIVE STOCK EXCHANGE
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted April 11, 1915. Decided June 18, 1915.

1. Assessment of freight charges upon hoof selling weights, less fill allowances, not found to be unlawful.
2. Requirement that the variation between weights taken on track scales and hoof selling weights shall amount to 1,000 pounds per car as a condition to setting aside the one in favor of the other found to be unreasonable.

J. W. Farrar and Frank Witherspoon, jr., for complainant.

T. J. Norton and A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company.

E. F. Tillman and P. J. Hitt for St. Louis & San Francisco Railroad Company and the receivers thereof.

G. H. Crosby and K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

O. Maxey for Chicago, Rock Island & Pacific Railway Company.

R. R. Mitchell and J. W. Spoor for Kansas City Southern Railway Company.

A. F. Stryker for South Omaha Live Stock Exchange, intervener.

H. L. Wyatt for St. Louis National Stock Yards, intervener.

M. E. Casto for Wichita Business Association and Stock Yards Board of Trade & Live Stock Exchange Association of Wichita, interveners.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The petition attacks as unlawful certain rules and practices which relate to the weighing of live stock at Kansas City, Mo. Complaint is made against tariff provisions of two kinds; first, those providing that when cars are not track scaled the hoof selling weights, less certain fill allowances, shall be the basis for freight charges; and, second, those forbidding track-scale weights, if taken, to be set aside in favor of hoof selling weights unless the difference between these weights amounts to 1,000 pounds per car, under some tariffs, or 500 pounds per car under others.

The South Omaha Live Stock Exchange, the St. Louis National Stock Yards, the Wichita Business Association, and the Stock Yards Board of Trade & Live Stock Exchange Association of Wichita, Kans., intervened in defense of the practice familiarly known as the hoof weight system of assessing freight charges on hoof selling weights, less fill allowances, as now followed at Omaha, Nebr., St. Louis, Mo., Wichita, Kans., and other points.

The tariffs of the defendants respecting the weighing of live stock consigned to the Kansas City market differ from each other in certain particulars, as will be shown, but for present purposes the following provisions, found in the tariff of the Atchison, Topeka & Santa Fe Railway I. C. C. No. 6326, item No. 14, may be taken as illustrative:

A. There being no general arrangements at Kansas City, Mo., with stock yards company or commission firms to obtain hoof selling weights on all live stock consigned to that market, making it necessary to track-scale cars loaded and light, it is understood, when requests are made to set aside such track-scale weights in favor of hoof selling weights, that such hoof weights less fill allowances (see note) may be protected when same are greater or less than the net track-scale weights by more than 1,000 pounds per car, subject to established minimum weights.

B. When such hoof selling weights, less the fill allowances (see note), do not vary more than 1,000 pounds per car from the track-scale weights, no correction will be made and track-scale weights, subject to established minimum weights, will be the basis for freight charges.

C. When cars are not track scaled the hoof selling weights less fill allowances (see note) will be the basis for freight charges subject to established minimum weights.

NOTE.—The hoof selling weights are obtained on stock yards scales after the stock has been watered and fed (which is termed "fill"). In the absence, therefore, of an actual weight taken prior to the fill in the interest of uniformity and to the end that approximate weights representing actual weights may be obtained, the following allowances for fill are deducted from hoof selling weights:

Allowances for fill on live stock received:	Pounds.
Cattle, carloads, in cars over 12 hours.....	per car.. 800
Cattle, carloads, in cars 12 hours or less.....	do.... 500
Hogs, single-deck cars.....	do.... 300
Hogs, double-deck cars.....	do.... 600
Sheep.....	No deduction.

Complainant asks us to find that it is unlawful to assess freight charges upon hoof selling weights, less fill allowances, and that such charges should be assessed in all cases upon track-scale weights at destination; that if for any reason the defendants fail to obtain track-scale weights their freight charges should be assessed upon the tariff minima; and that the requirement of 1,000 or 500 pounds variation as a condition of setting aside track-scale weights in favor of hoof selling weights is unreasonable and causes unjust discrimi-

nation. The reasons assigned by complainant are that it is the legal duty of the carrier to weigh live stock; that the system of assessing freight charges upon hoof selling weights, less fill allowances, adds to the burdens and expense of commission firms and delays remittances; and that the so-called "fills" often greatly exceed the allowances and vary with each shipment, thus causing overcharges and discrimination between shippers.

The practice of assessing freight charges upon hoof selling weights has followed the change in stating live-stock rates in cents per 100 pounds instead of dollars per car. It was proposed by the carriers as a means of saving time in delivering shipments. The practice is this: When the live stock have been taken off the cars they are fed and watered, which is termed the "fill." They are sold on the basis of the weights taken after the fill. The commission firms receive from the carriers information as to the rates, the car minima, and the fill allowances applicable to the shipments. Freight charges are computed upon the hoof-selling weights after deducting the fill allowances. In some cases such computation is made by the commission firms, in other cases by the carriers. The delays in remitting to the shippers occur when the aggregate freight charges are not promptly ascertained. The facts of record do not show that the burdens involved in the computing of freight charges or the delays in remitting are serious. These are details which are capable of adjustment. It is clear that they have no fundamental bearing upon the legality of the practice of using hoof selling weights as a means of assessing freight charges.

A more important issue concerns the fill and the fill allowances. Much testimony was introduced for the purpose of showing that carloads of live stock vary greatly in the weight of fill taken, and that if the stated allowances are greater than the fill in some cases they are much less in others. It would serve no useful purpose to state in detail the evidence upon this issue of fact. The weights of many carloads which were track weighed at destination have been compared with the hoof weights taken before and after the fill. These comparisons show that there is considerable variation in the fill and that it often exceeds the present fill allowances. Variation is inevitable because of the many factors which are operative, such as the treatment of the live stock prior to shipment, the length of time in transit, and the weather conditions. Complainant has made a part of its case the report prepared by the United States Department of Agriculture of an investigation of the shrinkage in weight of beef cattle in transit. Dealing with southwestern territory and tabulating the weights of

3,900 cattle shipped in 1911, the results are shown in the following table:

Description.	Num-ber of ship-ments.	Num-ber of cattle.	Average weight at origin.	Net shrinkage after fill.		Ratio of shrink-age to live weight at origin.
				Range.	Average.	
Southwestern range calves en route less than 36 hours.....	3	211	Pounds. 246	Pounds. 11-13	Pounds. 12	Per cent. 4.9
Southwestern range cows en route less than 24 hours.....	8	1,307	860	26-60	34	4.0
Southwestern range cows en route 24 to 36 hours..	17	1,383	907	4-64	32	3.6
Southwestern mixed range cattle en route less than 24 hours.....	13	849	783	12-71	26	3.3
Southwestern mixed range cattle en route 24 to 36 hours.....	5	150	751	19-75	42	5.6

¹ Gain in weight instead of shrinkage.

From the foregoing table and others found in the same exhibit it appears clearly that in the majority of shipments the weight of cattle after the fill is less than at point of origin. This fact forms the basis of the carriers' contention that the present fill allowances are more liberal than could reasonably be demanded. They take the position that they are lawfully entitled to assess freight charges upon the weights at point of origin, and that inasmuch as these weights generally exceed the weights after the fill has been taken at destination it would be entirely just to assess their charges upon the hoof selling weights without making any allowances whatever. They further point to the fact that the shipper sells the live stock upon the hoof weights after the fill without deduction and urge that he should not complain if freight charges are assessed upon the same basis, especially if allowances are made from these weights.

The principle here involved has been clearly stated by the Commission as applied to the transportation of coal:

It seems proper for a railroad company to provide in its tariff that the weight as ascertained at point of origin shall govern, unless shown to be incorrect within such measure of tolerance as may be properly fixed. Where the commodity varies in weight during the transportation, it may provide that the weight so ascertained shall govern irrespective of the destination weight. * * *

Where coal is wet in process of preparation for shipment so that the moisture does not become at any time a part of the coal itself but soon evaporates, there would seem to be strong reason why a proper deduction should be made from the weight as ascertained at the mine. When the moisture is a part of the coal itself, even though it subsequently evaporates, the carrier may properly require that the weight at the mine shall govern. *In re Weighing of Freight by Carrier*, 28 I. C. C., 7, 25, 26.

The application of this principle to the transportation of live stock would permit the carriers to assess freight charges upon point of origin weights, provided the shipper were permitted to show inaccu-

racies by reweighing or by other means. See *In re Weighing of Freight by Carrier, supra*, p. 30. Frequently it is not possible to weigh at origin, and in that event weights must be taken in transit or at point of destination. After arrival of the trains at the markets it is important that they be unloaded quickly, and this has led to the use of hoof selling weights, less fill allowances.

In attacking this system the Kansas City Live Stock Exchange stands alone. The same practice is followed at St. Louis, Omaha, St. Joseph, Mo., Fort Worth, Tex., Oklahoma City, Okla., and Wichita, although not at Chicago, Ill. The interveners opposed complainant's position in this matter. Their evidence shows that the hoof weight practice is in many respects more satisfactory than the taking of weights upon track scales. The saving of time in unloading live stock at the market is an advantage to shipper, carrier, buyer, and all other interested parties. That considerable time is thus saved the record conclusively shows. If any order is here to be entered declaring this practice to be unlawful, the interveners ask that it be confined to the Kansas City market. But if it is unlawful there it is unlawful everywhere.

Whatever the fact may be as to the average fill taken by cattle, illegality in the practice itself can not be predicated upon the amounts of these allowances as named in the current tariffs. That is a matter which may be readjusted if necessary, and in this connection it may be stated that at the time of the hearing tests of the fill taken were being made at the Omaha market. The petition attacks the practice as unlawful, but we do not understand that we are asked to make any finding and order with respect to the amount of these allowances.

Inasmuch as the fills are not uniform, it is apparent that the hoof selling weights are subject to variation. This fact, however, we do not regard as proof that unjust discrimination is caused by the practice here in issue. The further fact that in the majority of cases the weight taken after the fill shows a net shrinkage from weights at point of origin must be considered.

The matter is a practical one and should be considered from a practical viewpoint. Weights of many commodities transported can not be taken with unfailing exactitude. The most accurate weights which can be secured with due consideration of all of the necessities of the situation should unquestionably be obtained. But the Commission will not condemn lightly a system which gives satisfaction at many important markets. From all the evidence it does not appear that the use of hoof selling weights, less fill allowances, at Kansas City results in such increased burden upon some shippers or favor to others as to cause unjust discrimination.

The position of complainant with reference to the setting aside of track-scale weights in favor of hoof selling weights in order to correct errors is stated in the complaint as follows:

In cases where there is an error in the railroad weights as shown by the actual weights of said live stock, after being fed, watered, and filled there should be an established allowance for shrinkage or fill, on which basis the overcharge on said shipments could be ascertained and corrected. * * *

* * * The refusal of defendants * * * to recognize and adjust claims for overcharge for the difference in weight between the railroad track scale and the hoof or selling weights for less than 500 pounds or 1,000 pounds is unjust, unreasonable, and an unlawful practice, and in violation of section 1 of the act to regulate commerce.

The meaning of these allegations seems to be this: When the track-scale weights exceed the hoof selling weights an error in the former is shown. The weight for which the carrier may properly charge is assumed to be the weight of the live stock as delivered, and therefore an allowance for the fill is necessary to ascertain that weight.

It is apparent that the difficulty of determining the proper allowance to be made for the fill is as great when the purpose is to correct errors as it is when the purpose is to assess freight charges. The variations in the fill taken, on account of which unjust discrimination is claimed, will occur in the one case as well as the other. To strike out of the tariffs, as we are asked to do, all provisions requiring the variations between the weights to be 1,000 pounds or 500 pounds, or any other amount, as a condition of setting aside track-scale weights, would in many cases result in substituting hoof selling weights less fill allowances as the basis of the freight charges. For the record shows that some fills are very small while occasionally there is no fill whatever, but an actual loss in weight. If this system is unlawful, as is alleged, because the fills vary or because track-scale weights are more uniform and accurate, it does not become lawful in those cases where track-scale weights are in error.

The current tariffs of the defendants differ with regard to this matter. Those of the Atchison, Topeka & Santa Fe, Missouri Pacific, and Union Pacific provide that track-scale weights will be set aside when the variation amounts to 1,000 pounds per car. In the tariffs of the Chicago, Rock Island & Pacific and the St. Louis & San Francisco a variation of 500 pounds is prescribed. In the *Weighing of Freight case, supra*, the Commission said:

It will be readily appreciated that the exact weight of the contents of a car can not be ascertained by the use of track scales. * * * It has also been noted that some of the coarser commodities which are most frequently the subject of transportation shrink several hundred pounds in transit. From these and other causes it is admitted on all sides that there must be a limit of error within which the ascertained track-scale weight of a carload of freight shall be deemed to be correct. This limit is known as tolerance, and is in most jurisdictions 500 pounds, but in the jurisdiction of the Western

Weighing Association and Inspection Bureau, which covers most territory on the west of the Mississippi River and east of the Pacific coast states, is 1,000 pounds.

In our opinion 1,000 pounds is too great. In case of a commodity which only loads 20,000 pounds to the car, and there are many such, it means a twentieth of the entire loading. This is a very significant item in the assessment of the freight charges. * * * If one tolerance is to be fixed for the weighing of all commodities, 500 pounds would seem to be large enough (p. 29).

This expression of opinion was limited to the articles referred to in the investigation there reviewed, but it seems with equal force to apply to the weighing of live stock. See also *Rice v. Georgia R. R. Co.*, 14 I. C. C., 75; *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.*, 21 I. C. C., 632.

We are of the opinion and find that the system of assessing freight charges upon hoof selling weights less proper fill allowances has not been shown to be unlawful. We further find that a tolerance, as above defined, of more than 500 pounds is unreasonable. An order will be entered accordingly.

34 I. C. C.

No. 5027.
CITY OF DANVILLE, VA., ET AL.
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted January 7, 1914. Decided June 14, 1915.

1. The general adjustment of rates between Danville, Va., and points in the west, east, and south not found to be unreasonable or unjustly discriminatory, but in view of readjustments in rates from the west to points in North Carolina and in South Carolina and the establishment to such points of rates on grain and grain products and on flour lower than the class rates, the carriers will be expected to establish corresponding rates on those commodities to Danville.
2. Rate of \$2.20 per net ton for the transportation of bituminous coal to Danville from mines in the Pocahontas fields of West Virginia found to be unreasonable and rate of \$2.10 prescribed for the future.

E. Walton Brown, Charles Conrads, and Arthur B. Hayes for complainants.

R. Walton Moore and Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

In this complaint, brought by the city and a number of the commercial and manufacturing interests of Danville, Va., it is alleged that the present adjustment of rates between Danville and points in the west, east, and south is unreasonable in and of itself; unjustly discriminatory in that it unduly prefers Lynchburg, Richmond, and Roanoke, Va., and in some instances in contravention of the provisions of the fourth section of the act to regulate commerce. The rates on coal from the Pocahontas and other West Virginia fields to Danville are specifically challenged, both as unreasonable and unjustly discriminatory, and will be considered separately. Reparation is asked.

The issues in this case are substantially the same as those in *City of Danville v. S. Ry. Co.*, 8 I. C. C., 409, decided February 17, 1900, in which the Commission held that rates from the west, east, and south might properly be higher to Danville than to Lynchburg by not more than certain percentages—10 per cent from northern and eastern cities and from New Orleans, and 15 per cent from the west. The petition of the Commission to the courts for the enforcement of

its order was dismissed upon the ground that in the absence of a showing of inherent unreasonableness in the rates to Danville the existence of lower rates to Lynchburg, resulting from real and substantial competition, did not create such unjust discrimination as was forbidden by the act. 117 Fed., 741; 122 Fed., 800. The present relationship of rates is substantially the same as that in effect in 1900.

Norfolk, Va. (or points in its immediate vicinity), is the eastern terminus of the Chesapeake & Ohio and Norfolk & Western railways, which reach Cincinnati, Ohio, and other points in central freight association territory, and of the Virginian Railway, which runs west 436 miles to Deepwater, W. Va., there connecting with the Chesapeake & Ohio. The Chesapeake & Ohio passes through Richmond and Lynchburg, points 85 and 204 miles, respectively, west of Norfolk, and the Norfolk & Western passes through Lynchburg and Roanoke, the latter being 243 miles west of Norfolk and served from that point also by the Virginian Railway. The Southern Railway, the only southeastern carrier extending north of the points named, has a line from Washington, D. C., through Lynchburg and Danville (174 and 240 miles, respectively, south thereof) to Atlanta and other points in the south and in connection with the Cincinnati, New Orleans & Texas Pacific, which it controls, to Cincinnati and Louisville. The Southern also has lines from Danville, which is a few miles north of the Virginia-North Carolina state line, east to Norfolk, 207 miles, and northeast to West Point, Va., the latter line passing through Richmond, 141 miles from Danville. Richmond is the southern terminus of the Richmond, Fredericksburg & Potomac Railroad, the direct line to Washington, and one of the northern termini of the Seaboard Air Line and Atlantic Coast Line railways. Danville is served also by the Danville & Western Railway, a line running west therefrom to Stuart, Va., and connecting at Koehler, Va., 47 miles from Danville, with the Winston-Salem division of the Norfolk & Western. This line is controlled by the Southern Railway.

Danville is in Carolina territory, which includes that portion of Virginia, the Carolinas and Georgia lying south of the main line of the Norfolk & Western from Norfolk to Roanoke, thence to Bristol, Tenn.-Va., and north of a line from Atlanta, Ga., through Augusta, Ga., to Charleston, S. C. This territory is served primarily by north and south lines, differing in that respect from trunk line territory, in which, due to the influence of strong east and west lines, the points alleged to be unduly preferred, hereinafter referred to as the Virginia cities, are grouped.

The class rates, in cents per 100 pounds, in effect to Danville from various important points in the west, east, and south are as follows:

From—	1	2	3	4	5	6	A	B	C	D	E	H	F ¹
Cincinnati.....	68	56	45 ^o	33	28	21	19	27	23	30	30	30	66
Louisville.....													
Chicago.....	103	86	67	48	41	31	31	39	33	30	43	45	66
Baltimore:													
All rail.....	71	60	49	36	29	23	23	26	23	21	29	36	44
R. & W.....	63	54	44	32	26	21	21	24	21	19	26	32	40
New York:													
All rail.....	77	66	55	40	33	27	27	30	27	25	32	40	59
R. & W.....	69	60	50	36	30	25	25	28	25	23	29	36	46
Atlanta.....	84	74	64	50	43	33	24	31	28	25	43	50	64
New Orleans.....	110	97	85	70	56	46	34	41	38	35	55	68	74

¹ Per barrel.

The class rates in effect to the Virginia cities from the same points on the date of hearing were as follows:

From—	1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati.....	62	53½	40½	27½	23	18½	.....	.....	.....	.....	.....	.....	.....
Louisville.....													
Chicago.....	72	62	47	32	27	22	.....	.....	.....	.....	.....	.....	.....
Baltimore:													
Richmond.....	26	22	18	16	13	10	10	16	10	10	13	16	.....
Lynchburg.....	52	45	35½	24	20	16	16	20	16	16	20	24	32
Roanoke.....	58	49	38½	27	23	19	.....	.....	.....	.....	.....	.....	.....
New York:													
Richmond.....	37	32	26	23	17	14	14	23	14	14	17	23	.....
Lynchburg.....	54	47	38	25	22	18	18	22	18	18	22	25	36
Roanoke.....	68	59	51	32	28	23	.....	.....	.....	.....	.....	.....	.....
Atlanta.....	84	76	64	52	43	40	24	34	28	27	45	55	58
New Orleans.....	92	82	72	58	47	41	37	46	38	37	56	67	74

Effective in February, 1915, rates from points in central freight and trunk line association territories to the Virginia cities were increased, approval having been given by the Commission in its report upon supplemental hearing in *The Five Per Cent case*, 32 I. C. C., 325, and the current rates are as follows:

From—	1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati.....	65.6	56.4	42.7	29.0	24.4	19.9	.....	.....	.....	.....	.....	.....	.....
Louisville.....													
Chicago.....	75.8	65.3	49.5	33.8	28.5	23.3	.....	.....	.....	.....	.....	.....	.....
Baltimore:													
Richmond.....	27.6	23.4	19.2	17.0	13.8	10.6	10.6	17.0	10.6	10.6	13.8	17.0	.....
Lynchburg.....	54.6	47.3	37.3	25.2	21.0	16.8	16.8	21.0	16.8	16.8	21.0	25.2	33.6
Roanoke.....	60.9	51.5	40.4	28.4	24.2	20.0	.....	.....	.....	.....	.....	.....	.....
New York:													
Richmond.....	34.6	33.4	27.2	24.0	17.8	14.6	14.6	24.0	14.6	14.6	17.8	24.0	.....
Lynchburg.....	56.7	49.4	39.9	26.3	23.1	18.9	18.9	23.1	18.9	18.9	23.1	26.3	37.8
Roanoke.....	71.4	62.0	53.6	33.6	29.4	24.2	.....	.....	.....	.....	.....	.....	.....

The short-line mileages from the points of origin named to Danville and to Lynchburg, the latter being the Virginia city generally used by complainants for comparative purposes, are as follows:

From—	To Danville.	To Lynchburg.
	Miles.	Miles.
Cincinnati.....	536	470
Louisville.....	599	523
Chicago.....	820	754
Baltimore.....	278	212
New York.....	467	401
Atlanta.....	409	475
New Orleans.....	902	946

From the west the short line to Lynchburg is the Chesapeake & Ohio, which from Louisville is 187 and from Cincinnati 272 miles shorter than the route of the Southern Railway through North Carolina. The short route to Danville is via Lynchburg, the route of the Southern being longer from Louisville by 55 miles and from Cincinnati by 140 miles. The latter carrier has made arrangements, however, to deliver to the Chesapeake & Ohio at Lexington, Ky., traffic originating on its lines in the west and destined to the Virginia cities, thus practically retiring from this traffic as a delivering line. It has not actively engaged in export traffic from the west to Norfolk for about two years, and for some time has not solicited or handled in any quantity traffic from the west to the Virginia cities.

From New Orleans the short-line rail route to Lynchburg is via Chattanooga, Tenn., and Bristol, Tenn.-Va., this route (of which the Southern is a link) being 22 miles shorter than the route via Atlanta and the Southern beyond. The latter is the short route to Danville. The testimony indicates, as will be explained hereinafter, that the rail rate-making routes to Lynchburg are those formed by the Illinois Central or other New Orleans lines in connection with the Chesapeake & Ohio or Norfolk & Western. The distance to Lynchburg via the Illinois Central and Chesapeake & Ohio is 1,320 miles.

From eastern port cities and interior eastern points the majority of the traffic to Carolina territory moves by the rail-and-water routes. The Southern participates in this traffic via its lines from Norfolk, but it is stated that it has never solicited, and has now made arrangements to withdraw from, rail-and-water traffic to the Virginia cities, except from Baltimore and contiguous points in connection with the route of the Chesapeake Steamship Company to West Point, Va., its own line to Richmond, and the Chesapeake & Ohio beyond. From New York and the east generally the short rail line to both Lynchburg and Danville is over the Southern from Washington.

In the adjustment of rates from the Buffalo-Pittsburgh zone and points west thereof to the Atlantic seaboard the basic rate is that from Chicago to New York, other points in the west taking percentages thereof and rates to other eastern ports being made differentials higher or lower than the New York rates. Norfolk has for a number of years taken the same rates as Baltimore, the causes leading to the present adjustment being stated as follows in the report in the former *Danville case*:

* * * The Baltimore rate, owing to various competitive influences, was, previous to the construction of the Chesapeake & Ohio Railway, an extremely low rate. We find from the testimony in this case that the Chesapeake & Ohio determined to place Richmond and Norfolk upon an equality with Baltimore in the matter of rates, and that subsequently, upon the passage of the interstate commerce act, it so interpreted the 4th section of that act as to give to all intermediate points as low a rate as the more distant point. When the Norfolk & Western entered Richmond, Lynchburg, and Norfolk it found this relation in rates in effect, and that relation has ever since been maintained. The Southern was the last competitor to enter this territory, and we find upon the testimony of Mr. Culp, its traffic manager, that the policy of that line has been to meet at Richmond, Lynchburg, and Norfolk the rates made by other lines.

We do not find, as claimed by the Southern Railway, that the Baltimore rate has fixed the Richmond and Norfolk rate. Upon the other hand, these two rates have mutually interacted the one upon the other, and while the Baltimore rate has been subject to reductions by influences from the north as well as from the south, we think that the Norfolk rate may have operated to reduce the Baltimore rate quite as frequently as the reverse. Neither do we find, as claimed by this same defendant, that the Chesapeake & Ohio has been responsible all along for the Richmond, Lynchburg, and Norfolk rates, and that the Norfolk & Western, upon entering the field, and subsequently the Southern, have simply met those rates. These three lines of railway are in competition for this business, and there is no evidence which satisfies us that any one of them has been in the past, or will be in the future, entirely responsible for fluctuations in the competitive rates.

Cincinnati is an 87 and Louisville is a 100 per cent point in the trunk line adjustment, but to the Virginia cities the lines from Louisville have established therefrom the same rates as are applicable from Cincinnati. The first-class rate from Chicago to New York prior to the recent general increase was 75 cents per 100 pounds, and that to Baltimore (and consequently to Norfolk and the other Virginia cities), 72 cents. The first-class rates from Cincinnati and Louisville were accordingly 65 cents to New York and 62 cents to Baltimore and the Virginia cities.

The testimony is that on traffic from Chicago to the Virginia cities the Chicago-Cincinnati lines generally demanded as a division their full locals to Cincinnati (40, 34, 25, 17, 15, and 12), and in order for the Cincinnati-Norfolk lines to participate in traffic to Norfolk at

an equality of rates with Baltimore it was necessary for them to establish proportionals equal to the difference between the Chicago-Baltimore and the Chicago-Cincinnati rates as follows: 32, 28, 22, 15, 12, and 10; these proportionals being applicable to traffic to all of the Virginia cities and through Louisville as well as Cincinnati.

Class rates from Cincinnati and Louisville to Danville are made by combination of the proportionals referred to between Cincinnati or Louisville and Lynchburg and the local rates of the Southern Railway, which are published also as proportionals, beyond, the latter being as follows: 36, 28, 23, 18, 16, 11, 9, 12, 12, 9, 16, 18, and 24. From Chicago the lines to the Virginia cities publish proportionals applicable on traffic to points in Carolina territory on a scale of 67 cents first class, and these added to the local rates of the Southern result in rates to Danville higher by 31 cents, first class, than the former Lynchburg rates and lower by 5 cents, first class, than the former combination on Lynchburg. Rates to Danville are now higher by 27.2 cents first class than those to Lynchburg and lower by 8.8 cents first class than full combination on that point. The proportionals from Chicago to Lynchburg were made by the addition of the Cincinnati to Virginia cities proportionals and differentials to Cincinnati somewhat lower than the local rates. Rates to Danville from St. Louis, a 117 per cent point in the trunk line adjustment, are higher than those from Cincinnati or Louisville by the following differentials: 33, 29, 22, 15, 13, 10, 9, 12, 9, 7, 13, 15, and 18.

Rates from the Buffalo-Pittsburgh zone to the Virginia cities are the same as the rates from the Columbus, Ohio, zone to Baltimore, it being stated that the trunk lines not feeling justified in extending to the Virginia cities the rate to Baltimore from Pittsburgh published thereto the rate from the next zone west. To Carolina territory, however, rates from Pittsburgh are made by the use of arbitraries or specifics to the Virginia cities generally lower than the local rates in effect prior to the recent general increase, to which are added the local rates of the Southern beyond.

From the west through class rates to Danville are governed by the southern classification, whereas those to the Virginia cities are governed by the official classification, the difference in ratings resulting in some cases in rates to Danville equal to or even lower than those to Lynchburg. To illustrate, certain classes of furniture are rated second class in official and third class in southern classification, the rates on the respective classes from Cincinnati being 56.4 cents to Lynchburg and 45 cents to Danville. A number of instances of this kind are cited, but the record does not contain any definite statement of the extent to which such differences exist.

The differences between the rates on the numbered classes to Danville and Lynchburg from Cincinnati, Louisville, and Chicago are now as follows:

Class.....	1	2	3	4	5	6
From Cincinnati.....	2.4	10.4	2.3	4.0	3.6	1.1
From Louisville.....						
From Chicago.....	27.2	20.7	17.5	14.2	12.5	7.7

Due, however, to the differences in rating under the two classifications, the establishment of commodity rates and other causes the above are not accurate measures of the differences in rates actually paid to the two points. For instance, on grain from Chicago, Danville pays 26.2 cents per 100 pounds, or full combination of 17.2 cents to Lynchburg and the class D rate of 9 cents beyond. From Cincinnati the rate on this commodity to Danville is the class D rate of 20 cents, while to Lynchburg there is a commodity rate of 14.9 cents. From Hillsdale, Mich., the rate on flour to Danville is 28.4 cents per 100 pounds, constructed 16.4 cents to Lynchburg and the local class F rate of 12 cents beyond. From Zanesville, Ohio, the rate on agricultural implements to Danville is also full combination on Lynchburg, 32.3 cents, using the sixth-class rate of 11 cents from the basing point. From Pittsburgh the rate to Danville on iron and steel articles, which constitute the greater portion of the traffic, is 29½ cents; to Lynchburg the rate has been increased from 20 to 21.3 cents. From Grand Rapids, Mich., the rate on furniture rated second class in official classification is 62.6 cents to Lynchburg, while to Danville the Cincinnati combination applies, 83.3 cents—38.3 cents to Cincinnati plus the third-class rate under the southern classification of 45 cents. From Cincinnati and Louisville to Lynchburg there is an any-quantity commodity rate of 29 cents per 100 pounds on unmanufactured tobacco, while to Danville there is a carload rate of 27½ cents, minimum 24,000 pounds, and a less-than-carload rate of 30 cents.

No through class rates are published from Danville to the Ohio River or beyond, westbound traffic, which consists largely of manufactured articles, moving on commodity rates higher than the local rates from Lynchburg by certain arbitraries or differentials. On smoking tobacco and cigarettes, any quantity, the rates from Danville are 20 cents higher than the Lynchburg rates, or 77.6 and 82.8 cents to Cincinnati and Chicago, respectively, the arbitrary stated being 16 cents per 100 pounds less than the local rate from Danville to Lynchburg. Prior to the recent general increase the rates on cotton piece goods from Danville to Cincinnati and Chicago were higher

¹ Danville lower than Lynchburg.

than corresponding rates from Lynchburg by 15 and 18 cents per 100 pounds, respectively. The current rates from Lynchburg, however, have been increased to 42 and 46.2 cents, while from Danville the rates remain 55 and 61 cents, respectively.

From eastern port cities the rail carriers meet the ocean rates to Norfolk, and there are no differentials between routes to Lynchburg, the rates to which are governed by the trunk line adjustment to the west. There are differentials at Danville in favor of the water-and-rail routes on the following scale: 8, 6, 5, 4, 3, and 2. The differentials at points south thereof are on a scale of 12 cents, first class.

Rail-and-water rates to Danville were made by the addition to the Richmond to Danville locals (46, 38, 31, 21, 17, and 14) of differentials lower than the former local rates from Baltimore to Richmond by the following amounts: 9, 6, 5, 5, 4, and 3. Prior to the recent general increase the all-rail rates from Baltimore to Danville were therefore equal to or but 1 cent per 100 pounds lower than the full combination on Richmond. Rates to Danville from New York are higher than those from Baltimore by 6 cents on the first three and 4 cents on the other numbered classes.

From Atlanta the rates to Danville are generally the same as or somewhat lower than those to the Virginia cities. From New Orleans the rail rates to Norfolk, which are carried to the other Virginia cities, due to the handling of New Orleans traffic by the lines from Norfolk to the west in connection with the Illinois Central and other New Orleans lines, are made with relation to the ocean rates, only a few of which, however, appear of record. The basis from New Orleans to Danville is 2 cents over Greensboro, N. C., with combination on the Virginia cities as maxima; consequently the Danville rates are generally higher than those to the more distant Virginia cities and sometimes lower than those to Greensboro. The ocean rates on molasses from New Orleans are 24 cents to Norfolk and Richmond and 25 cents to Lynchburg. The rail carriers established at Norfolk and extended to the other Virginia cities a rate of 30 cents, any quantity, on molasses, and the local rate from Lynchburg to Danville is 16 cents. The Greensboro rates are 44 cents, carloads, and 47 cents, less than carloads.

To New Orleans the Virginia cities rates are generally carried as maxima from Carolina territory, this adjustment being due, it is stated, to the desire of the carriers to enable manufacturers in Carolina territory to market their products in the south in competition with manufacturers in other sections of the country.

It is stated in complainants' brief that they are "more concerned in securing a general order from the Commission which will necessarily apply to all Danville rates from and to all sections of the

country than an order changing rates on particular articles from or to specific points of origin or destination, although an order as to specific commodities may appear advisable"; also that "it would be manifestly impossible for an order or decree to go further than to be somewhat general in its terms and acting upon the system of rate making as affecting the great majority of rates." It, in fact, would be impracticable for the Commission, upon the record before it, which deals with the Danville rate situation generally, to pass specifically upon any substantial number of the individual rates cited by complainants, whose idea appears to be to secure a change in the relationship in rates between Lynchburg and Danville, rates to the latter not to be more than a certain per cent higher than those to the former or to be a certain per cent less than the full combination on Lynchburg. The rates in which complainants are principally interested are those on the staple commodities handled by jobbing houses, it being their desire to increase the territory in which they can compete with Lynchburg and the other Virginia cities.

There was considerable testimony as to the disadvantage under which Danville is laboring, it being contended that it can compete with Lynchburg in but a very limited territory to the north of Danville and to the south thereof for a distance of only about 150 miles, beyond which Lynchburg has an advantage, due to the fact that the combination of the rates into and out of that point is lower than a similar combination on Danville. There has been some modification of this, of course, due to the recent general increase in rates to Lynchburg. There was also testimony as to the inability of Danville to secure the location there of factories, due, it is contended, to the more favorable adjustment enjoyed by the Virginia cities, and it is pointed out that while the amount now invested in manufacturing in Danville is large, comparing favorably with that invested at Lynchburg, about 90 per cent of it is in one cotton-milling concern, which is not a party to this proceeding.

The adjustment of rates from the west to Carolina territory has been the source of much controversy and has been considered by the Commission in a number of cases. Subsequent to the hearing in this case the carriers made general readjustments to points both in North and South Carolina, under which through rates from the west are made by the addition to the proportional rates to the basing points of proportionals substantially lower than the local scale. For instance, to Greensboro, N. C., a point on the Southern Railway, to which Danville is intermediate and 48 miles less distant from Lynchburg, the reductions amount to 11, 8, 8, 6, 6, 4, 3, 3, 4, 4, 5, 5, and 6, the proportionals from Lynchburg being 50, 43, 34, 26, 22, 17, 14, 19, 17, 14, 23, 27, and 34. In addition commodity rates have been established on

certain staple articles, the rates from Cincinnati and Louisville on grain and grain products generally being 1 cent per 100 pounds lower than the class D rates, and those on flour 4 cents per barrel lower than the class F rates. Class and commodity rates from Evansville, Cairo, St. Louis, Memphis, and Nashville are differentials over or under the rates from Cincinnati and Louisville. These readjustments resulted in slight increases in discrimination against certain intermediate points on the more circuitous routes through Knoxville and Asheville, but there are no deviations on the routes through the Virginia cities. Authority to establish the reduced rates via the longer routes was granted by the Commission, the rates to North Carolina being discussed in *Rates to North Carolina*, 29 I. C. C., 550.

Subsequent to the establishment of the rates in question the Corporation Commission of the State of North Carolina requested the Commission to dismiss a complaint filed by it, in which was challenged the reasonableness of class and commodity rates to Greensboro from points in central freight association territory and from Lynchburg, whereupon the complaint was dismissed. The Odell Hardware Company, of Greensboro, had filed a substantially similar complaint and intervening petitions had been filed on behalf of several other North Carolina points which desired to secure the benefit of any reductions which might be ordered, and hearing was had and decision rendered thereon, the finding of the Commission being that the rates to Greensboro and the other points involved from the Ohio River crossings, from points in central freight association, Buffalo-Pittsburgh, and eastern seaboard territories, and from Lynchburg were not shown to be unreasonable or unjustly discriminatory. *Corporation Commission of North Carolina v. S. Ry. Co.*, 33 I. C. C., 487.

The present class rates from Cincinnati and Louisville to Greensboro are 82, 71, 56, 41, 34, 27, 24, 34, 28, 25, 37, 39, and 56, and exceed the Danville rates by the following amounts: 14, 15, 11, 8, 6, 6, 5, 7, 5, 5, 7, 9, and 10.

As hereinbefore stated, Greensboro's rates are made by the use of proportionals from Lynchburg, while Danville's rates are made by the use of the local rates from the same point prescribed by the state commission, but it should be borne in mind that it is the reasonableness of the total rates and not of any portion thereof which is challenged, and that should proportionals be established from Lynchburg to Danville the result would be rates to the latter points from the Ohio River crossings lower than are in effect to Lynchburg, for which there is no justification. As a matter of fact, complainants do not contend that Danville should have as low rates from the west as Lynchburg.

Upon consideration of all of the facts of record we are of opinion that the rates to Danville from the west have not been shown to be unreasonable and that the present adjustment from that section does not subject Danville to undue prejudice or disadvantage or the Virginia cities to undue preference or advantage. We are of opinion, however, in view of the readjustment to Carolina points and the establishment from Cincinnati and Louisville and related points of commodity rates on those articles generally lower than the class rates, that Danville should be given rates from Cincinnati and Louisville on grain and grain products 1 cent per 100 pounds lower than the class D rate and on flour 4 cents per barrel lower than the class F rate, with rates from the other crossings referred to above on the same relationship as exists between said crossings in rates on these commodities to Greensboro. In view of the fact that the North Carolina readjustment was not brought in issue by the complaint, we will not make an order covering these grain and flour rates, but the carriers will be expected to establish them within 60 days from the service of this report, failing which the complainants may take appropriate steps to bring the matter before us. .

From the east Lynchburg has the benefit of location, being 66 miles nearer than Danville by the all-rail short-line route, and being served by strong lines from the seaboard to the west which do not maintain lower rates via rail and water than via all rail, and this, together with the better operating conditions and greater density of traffic over the lines from Norfolk to Lynchburg, nullifies to a great extent the effect of the practical equality of distance to the two points from the port named.

As a result of water competition and the extension to the intermediate points on the lines to the west of the all-rail rates to Norfolk, Lynchburg has lower rates from New Orleans than Danville, an intermediate point. The justification for the difference between the rates to the two points can be determined more satisfactorily upon the applications filed by the carriers in accordance with the requirements of the amended fourth section.

Upon consideration of the facts of record we are of opinion that the general adjustment of rates from the east or south has not been shown to be unreasonable or to result in undue prejudice or disadvantage to Danville or shippers located at that point or in undue preference to the Virginia cities or shippers located there.

RATES ON COAL.

The rates on coal challenged are those from the Pocahontas and other West Virginia fields on the Norfolk & Western Railway. Bluefield, W. Va., a point 160 miles west of Lynchburg, is the assem-

bling point for coal from the Pocahontas, Clinch Valley, and Tug River districts, from which the rates are \$1.50 to Lynchburg and \$2.20 per net ton to Danville. The approximate average haul from these districts to Lynchburg is 205 miles, and to Danville 271 miles via Lynchburg and the Southern and 259 miles via Koehler, Va., and the Danville & Western.

The rate from the districts named to Roanoke, 55 miles west of Lynchburg, is \$1.30 per ton, and to points east of that the rate of \$1.50 is blanketed to and including Norfolk. Except for a few stations adjacent thereto, rates to points on the Southern Railway south of Lynchburg are blanketed—\$2 to stations within 40 miles of Lynchburg; \$2.20 to stations farther distant to and including Danville; and \$2.30 to stations south of the latter point to and including Greensboro. In *Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co.*, 26 I. C. C., 146, the Commission considered the rates from the districts named to Winston-Salem, N. C., and Martinsville, Va., the former being the terminus of and the latter a point 62 miles south of Roanoke on a branch of the Norfolk & Western Railway running south from that point 122 miles. Those rates were \$2.10 and \$2 per ton, respectively, the former having been prescribed by the Commission in *Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co.*, 16 I. C. C., 12, and the Commission prescribed a rate of \$1.80 to Martinsville. This rate is now carried to intermediate stations on the branch line except those within a few miles of Roanoke, which take somewhat lower rates. The rate of \$2.10 is carried to stations intermediate Martinsville and Winston-Salem. The rate to Danville & Western stations intermediate Koehler, which is about four miles from Martinsville, and Danville is \$2.20. Prior to May 24, 1909, on which date the rate to Winston-Salem was reduced pursuant to order of the Commission in the first Winston-Salem case, the rate to Danville was \$2.30 per ton.

The average ton-mile earnings on coal moving to Danville via Lynchburg are 8.1 mills; the car-mile earnings on a car of 50-ton capacity 40½ cents; the earnings on a car of the size stated \$110. The average assembling haul from the three districts to Bluefield was found in the last-cited Winston-Salem case to be 45 miles.

Upon consideration of the facts of record we are of opinion that the rate of \$2.20 per ton to Danville is unreasonable to the extent it exceeds \$2.10 per ton, and the latter will be prescribed as the maximum for the statutory period.

We are not of opinion that reparation should be awarded.

34 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 541.
GRAIN ELEVATION ALLOWANCES AT KANSAS CITY,
MO., AND OTHER POINTS.

Submitted April 10, 1915. Decided June 17, 1915.

Proposed cancellations of existing allowances for elevation at Kansas City, Mo., and other points, of grain and seeds, when not for export, destined to all points west and southwest of the Missouri River and in Louisiana west of the Mississippi River found to be justified.

H. G. Herbel and *F. G. Wright* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Texas & Pacific Railway Company.

T. J. Norton and *J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

J. M. Souby for Kansas City Southern Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and receivers.

E. P. Smith for Omaha Grain Exchange.

W. S. Washer for Atchison Board of Trade.

Clyde Taylor and *R. D. Sangster* for Board of Trade of Kansas City, Mo.

Charles Rippin for Merchants Exchange of St. Louis.

H. G. Krake for Commerce Club of St. Joseph.

R. O. McCormack for Fort Worth Freight Bureau.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

The tariffs under suspension in this proceeding were filed by a number of carriers and by W. A. Poteet, agent for other carriers, to become effective November 15, 1914, and later dates. Upon protests by boards of trade and like bodies at Kansas City, St. Joseph, and St. Louis, Mo.; Fort Worth, Tex.; Omaha, Nebr.; and Atchison, Kans., the operation of these tariffs has been suspended until September 15, 1915.

The respondents are called upon to justify proposed cancellations of tariff provisions for payment of an allowance of one-fourth of 1 cent per bushel now made to elevator operators at St. Louis, Des Moines, Iowa, Fort Worth, Kansas City, Omaha, and other points,

chiefly in the Missouri River territory, for elevation of grain and seeds destined to all points west and southwest of the Missouri River, and in Louisiana west of the Mississippi River. Cancellations are not proposed upon shipments to the Mississippi River crossings or points taking the same rates, or to points east thereof, or upon any shipments when for export, for the reason that other carriers, having no lines west of the Missouri River, propose to continue their allowances upon such shipments and respondents do not wish to withdraw from the eastbound or export traffic.

No provision is made, either by the suspended schedules or by other tariffs on file with the Commission, for elevation by the respondents in lieu of the elevation by operators for which allowance is made. One elevator stop and one track stop, and a further stop for milling if the shipment was not previously milled, are allowed by the carriers. Elevator stops under tariff definition constitute the delivery of shipment en route to final destination for the purpose of milling, cleaning, clipping, shelling, sacking, mixing, grading, drying, or storing, after which outbound shipment is rebilled within a specified time to a destination beyond. Track stops constitute the temporary stopping of articles specified, en route to first or final destination, for the purpose of inspection, weighing, changing consignee, ownership, or destination, without disturbing the contents in any way other than sampling, after which the car is forwarded on original waybill within a named time limit, except as rebilling may be required.

Cancellations are proposed by the respondents in order to conserve their revenues, and because it is felt that the elevation service is not properly a part of transportation. Its cost to respondents is large. Two illustrations will suffice. On movements of grain by the Missouri Pacific system to all destinations during April, 1914, elevation allowances amounted to \$17,075.05. Of this \$8,696.77 was paid on grain to destinations here involved. In October, 1914, these payments amounted to \$5,537.80 and \$1,074.54, respectively.

The history of elevation allowances may be read in the decisions of the Commission and the courts. *Matter of Allowances to Elevators*, 10 I. C. C., 309; *Allowances to Elevators by U. P. R. R. Co.*, 12 I. C. C., 85; *City Council of Atchison, Kans., v. M. P. Ry. Co.*, 12 I. C. C., 111, 254; *Allowances to Elevators by Union Pacific R. R. Co.*, 14 I. C. C., 315; *Traffic Bureau, Merchants' Exchange, v. C., B. & Q. R. R. Co.*, 14 I. C. C., 317; *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S., 42; *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S., 215; *Traffic Bureau, Merchants' Exchange, v. C., B. & Q. R. R. Co.*, 22 I. C. C., 496; and *In re Elevation Allowances*, 24 I. C. C., 197. They originated in the contract made in 1899 by the
34 I. C. C.

Union Pacific Railroad Company with Peavey & Company at Omaha, its eastern terminus, to enable that carrier to unload grain into elevators there and thus secure prompt release of its cars. *Matter of Allowances to Elevators, supra.*

Respondents show a change in conditions affecting the release of equipment since elevation allowances were first paid, and urge that there is no longer any sufficient reason from a transportation standpoint for the continuation of these allowances. These changed conditions relate chiefly to free interchange of cars upon through movements, and were referred to in *Traffic Bureau, Merchants' Exchange, v. C., B. & Q. R. R. Co.*, 14 I. C. C., 317, at page 323. At all elevation points here involved, except Fort Worth, the allowances are paid by the carriers of outbound shipments. For these reasons respondents urge that the allowances are not now paid to release equipment or for any service of transportation. They are characterized as payments by the outbound carrier to attract business to its line.

The Commission said in *In re Elevation Allowances, supra*, at page 199:

There are two kinds of elevation, one of which may be termed transportation elevation, consisting of the passing of the grain through an elevator for the purpose of transferring it from car to car and obtaining its weight, and commercial elevation, which involves various processes in the treatment of the grain itself, like cleaning, mixing, clipping, drying, etc. The first sort of elevation is an incident to the transportation of the grain, the second to the merchandising of the grain.

Respondents insist that the elevation in question is commercial rather than transportation elevation as thus defined, and that there is little occasion for transfer of grain at a terminal market. Thus, if a carload of grain is destined to a point beyond such market, economy of transportation requires that the car go through as originally loaded, or, if for storage at some point for commercial purposes, the transportation service ends at the elevator, and the respondents have no further control over the shipment. Stoppage in transit is now granted on many articles, such as sugar and apples, where the through rate, with or without a stop-over charge, is protected from point of origin to final destination; but in these instances the carriers do not pay the cost of unloading into the warehouse or reloading into the cars. It is the general rule that freight in carloads is loaded by the shipper and unloaded by the consignee.

The foregoing summarizes respondents' justification of the cancellations here proposed. The protestants show that the grain traffic to southwestern territory is an important part of their aggregate business, and that respondents receive certain benefits from elevation for which, they assert, respondents ought to pay, such as the fixation of carload weights, the prompt release of inbound cars,

and a maximum loading of outbound cars. They also contend that elevation is required of respondents by section 1 of the act, and that the cancellations would result in unjust discrimination.

The movement of grain from Missouri River points to the southwestern territory here involved is large. From Omaha 139,926 carloads of grain were moved during the years 1912, 1913, and 1914. Of those 55,795, or about 40 per cent, moved to the southwestern territory in question. Practically all points in the Texas groups can be reached by some one of the lines out of Omaha, and at these points there is a large consumption of grain produced in other states. The carload shipments of grain from Kansas City to Texas points for domestic consumption during the year 1914 amounted to 1,383 cars of wheat, 2,275 cars of corn, and 1,915 cars of oats. For the year 1913 these shipments were 1,320 cars of wheat, 1,711 cars of corn, 1,112 cars of oats. At St. Joseph one of the elevators received eight to ten thousand dollars a year in elevation allowances. Sixty per cent of its business is affected by the proposed cancellations.

Respondents concede that some benefits are received by them from the elevation of grain. Cars coming in from country stations are frequently loaded to less than capacity. The outbound cars can be loaded from the elevators to capacity. So also the carriers are furnished with the elevator weights, taken on hopper scales, based upon which they assess their freight charges, thus saving the time and expense involved in weighing cars on track scales. While urging that transfer is not necessary to secure correct weights, which the Commission has found to be true at St. Louis, *Elevation Allowances at St. Louis and East St. Louis*, 30 I. C. C., 696, respondents acknowledge that it is of advantage to all interested parties to have weights certified by an independent agency under proper supervision. Grain is bought and sold on elevator weights, which are therefore a necessity of the trade. The belief is general that they are more accurate than those taken on track scales, and prior to their use by the carrier variations between the two were frequently made the basis of claims against the carriers. Elevator weights are furnished to carriers of inbound as well as of outbound shipments, but the former pay no elevation allowances except at Fort Worth. Upon inbound tonnage the charge for weighing is made to the shipper.

The benefits thus received and recognized by the respondents are not, however, germane to the issues here involved. The act does not require freight charges upon shipments of grain to be assessed upon elevator weights. The weight of grain transported must be determined with reasonable accuracy by the carriers as an incident to their service of transportation. They must provide adequate facilities for weighing. At many places throughout the United

States such weighing is done on track scales, and condemnation of this method would find no warrant in law. If carriers choose to adopt the elevator weights, where ascertained, in preference to track-scale weights, their right to cancel elevation allowances is not affected thereby whether or not the carrier has paid for the weighing.

Protestants rely upon the decision of the Supreme Court in *Interstate Commerce Commission v. Diffenbaugh*, *supra*. In that case the employment of a company operating an elevator to perform elevation services for the carrier was held to be lawful. Referring to the elevation included in the term transportation by section 1 of the act, as construed in that case, the Commission said:

The first section of the act includes in the term transportation, along with the elevation and transfer in transit of grain, refrigeration, storage, handling. It would hardly be claimed that a shipper could require a railroad to refrigerate his property for his convenience either at some point upon the line of the railroad in transit or at the end of the haul. Neither would it be claimed that the owner could at will demand storage either in transit or at the end of the route, nor that the railroad was by the terms of the statute compelled to handle carload traffic in and out of the car. The meaning of the first section is clearly to impose upon the carrier the duty of refrigerating, storing, elevating, transferring, in so far as those matters are properly incidental to the transportation. It was the intent of Congress to compel the carrier to perform to the full its transportation service in all its essentials and to put that entire service within the jurisdiction of this Commission, to the end that unreasonable and discriminating charges might be prohibited. We are of the opinion that the elevation referred to by the Supreme Court is not commercial elevation, but that transportation elevation which is a necessary incident to the handling of grain from the field to the consumer. *Traffic Bureau, Merchants Exchange, v. C., B. & Q. R. R. Co.*, 22 I. C. C. 496, at 502.

In this view of the law it is clear that the decision of the Supreme Court in the *Diffenbaugh* case does not make the proposed cancellations unlawful. The basis and scope of that decision are expressed in the following brief quotation from the opinion of the court at page 47:

As the carrier is required to furnish this part of transportation upon request, he could not be required to do it at his own expense, and there is nothing to prevent his hiring the instrumentality instead of owning it.

So also it may be said that the act does not require the respondents to hire any instrumentality for the performance of a transportation service. The right of a carrier itself to perform the full duties of transportation is clear. *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 232 U. S., 199.

This the protestants acknowledge, but they assert that the respondents are not equipped, particularly at Omaha, for rendering the service here considered. The present equipment of the respondents can not affect their legal right in this matter. It may be assumed that they will provide whatever equipment may be necessary for such

transportation services as the requirements of their traffic make necessary.

Respondents' evidence establishes prima facie that, in general, under present conditions elevation is not a necessary incident to the transportation involved in these movements, and no instance was shown in which it is necessary. Their evidence upon this issue has not been met by protestants, whose testimony was largely directed to considerations not germane. It is clear that the elevation required of carriers by section 1, and for which, if rendered by an elevator operator, they may make an allowance under section 15, is such elevation as is reasonably necessary to the transportation involved; and that carriers are not required by the act to furnish elevation desired by the shipper for a commercial reason, but may permit stops in transit for such elevation, a transit service which, like all others, is subject to regulation by the Commission.

It is not shown that unjust discrimination will result from the fact that some allowances are to be canceled while others remain. If elevation is a necessary incident to the transportation of grain destined to the east or for export, then there is not such a similarity of circumstances and conditions between that movement and those here involved as would make unjust discrimination possible. If this service is not a necessary incident to the transportation eastbound or for export, and it should develop in the future that unjust discrimination exists, such discrimination would be chargeable to the allowances then in effect, not those here sought to be canceled.

What apparently has not been clearly perceived by the parties in the discussion of the issues now before us is that the cancellations of elevation allowances here proposed do not affect the right of any shipper to secure such elevation services as are made a part of transportation by section 1 of the act. By the suspended schedules the employment of private elevators to perform such services upon shipments to certain territories is proposed to be discontinued, but the duty of the carrier to provide whatever elevation is a necessary incident to the transportation of any shipment remains. This duty can not be withdrawn from the public, for it is a part of the carrier's obligation under the law. That there are no tariffs on file which provide for elevation by the respondents upon shipments of grain or seeds to the territory here involved does not, of course, preclude the requirement that such tariffs be filed if it should be established that elevation is a necessary incident to transportation upon a particular movement.

For these reasons we have found the suspended schedules to be justified, and an order will be entered vacating the orders of suspension.

No. 6114.
GEORGE M. SPIEGLE & COMPANY ET AL
v.
SOUTHERN RAILWAY COMPANY.

Submitted October 9, 1914. Decided June 17, 1915.

1. Defendant's rules and regulations applicable to lumber handled in transit at Newport, Tenn., not found unreasonable or unjustly discriminatory. *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678, cited and followed.
2. Charges on lumber bought by complainants at points between Newport, Tenn., and Asheville, N. C., shipped to Newport, and reshipped from the latter point under transit rates through Asheville to Virginia cities and east, not found unreasonable or unjustly discriminatory.
3. Reparation denied. Complaint dismissed.

M. C. Rhone for complainants.

R. Walton Moore and *C. J. Rixey, jr.*, for defendant.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainants are two corporations engaged in assembling, assorting, dressing, manufacturing, and shipping lumber. One of them, George M. Spiegle & Company, has its place of business at Philadelphia, Pa.; the other, the McCabe Lumber Company, at Newport, Tenn. Both are owned and controlled by George M. Spiegle.

In substance, complainants charge that the Southern Railway Company, the sole defendant, willfully and negligently fails to keep posted at Newport tariffs naming rates on lumber to and from that point; that defendant frequently changes its transit rules and its rates local to Newport, in order to avoid the effect of orders of this Commission, thus rendering it impossible for complainants to contract for future delivery of lumber without risk of great loss; that defendant imposes upon shippers at Newport rules and regulations governing the milling-in-transit service on lumber shipments, and charges for "back-haul" shipments handled there in transit, which are unreasonable and unjustly discriminatory against complainants; that the minimum charge of \$6 per car for such milling in transit is unreasonable and unlawful; and that the charging and collecting of 2 cents per 100 pounds on all lumber which arrived at Newport prior to January 15, 1913, and was there milled in transit and re-

shipped from Newport after that date, was in violation of our order in *Spiegle v. S. Ry. Co.*, 25 I. C. C., 71, wherein the Southern Railway was required to establish at Johnson City, Tenn., on or before January 15, 1913, milling-in-transit charges not in excess of 1½ cents per 100 pounds. Reparation is asked on shipments set out in detail in an appendix to the complaint.

POSTING OF TARIFFS.

Failure to post or file tariffs at Newport could only be dealt with in another proceeding. We understand from the record that the allegation of such failure was merely intended to call defendant's attention to some alleged carelessness in this regard.

CHANGE OF RULES.

There is no evidence that defendant has frequently changed its transit rules and rates for the purposes alleged, or that any section of the act has been violated by defendant with respect to changes in its tariffs in recent years affecting milling in transit of lumber at Newport or rates on lumber from and to that point.

TRANSIT RULES.

Complainants' objections to the rules governing milling in transit at Newport, as shown by the evidence, are to those which prohibit substitution of one kind of lumber for another; provide for the use of the "footage" and weight rule in ascertaining what lumber may move in transit and the charges therefor; require daily and other reports with respect to lumber on hand, received and disposed of on transit or nontransit account; limit to 12 months the time within which expense bills must be applied on transit shipments; and provide that no credit slips shall be issued for a particular kind of lumber which, being a part of a mixed carload shipment, weighs less than 1,000 pounds.

The allegations and evidence are similar to the allegations and evidence considered by us in *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678. Reference may be had to the report in that case for a general statement of the situation respecting the lumber business in the region involved, the attitude of the Commission as to transit, and a discussion of the transit rules and regulations under investigation here, as well as the policing regulations and practices maintained by the defendant with respect to lumber handled in transit. So far as the rules governing transit are concerned, it is admitted by complainants that conditions at Newport and at Asheville, N. C., a repre-

sentative point in the *National Casket case*, *supra*, are substantially similar.

Complainants cite precedents, in tariffs of carriers serving Buffalo, N. Y., for substitution of different kinds of lumber in transit. The Commission has not passed on them and the defendant is not responsible for them. The record before us warrants no change in the conclusions reached as to substitution in the *National Casket case*. So, also, the footage and weight rule and the requirements as to reports have not been shown to be unreasonable.

Complainants testify that there should be no limitation of time upon use of expense bills in securing transit if they are to be used to the fullest extent. A similar contention was ruled upon adversely in the *Transit case*, 24 I. C. C., 340, 343, 353. See also *Investigation and Suspension Dockets 101 and 101-A*, 24 I. C. C., 683. We do not find that a limitation of 12 months upon expense bills to be used with respect to shipments of lumber handled in transit at Newport is unreasonable.

In the *National Casket case* we found that—

The rule against issuing credit slips for a particular kind of lumber which, being a part of a mixed carload shipment, weighs less than 1,000 pounds, is unreasonable, and possibly is unjustly discriminatory. We hold that no such exception should be continued in the present transit rules.

Upon this record we adhere to our findings in that case.

The evidence shows that the agent of defendant at Newport fails to promptly issue freight bills showing scale weights of inbound and outbound shipments. How the delay occurs is not shown. It appears that outbound shipments are made on estimated weights based on the footage. If the scale weights thereafter reported show a substantial excess over the estimated weights, defendant refuses to permit the filing of additional inbound billing to cover such excess, but charges for it at local rates from the transit point. In the *National Casket case* the Commission considered and found unreasonable a similar practice. Defendant will be expected to remedy this situation so that injury or prejudice to Newport shippers will not continue.

BACK-HAUL CHARGES.

We come now to consider the allegations respecting back-haul charges maintained by defendant on lumber drawn from points between Newport and Asheville, milled in transit at Newport, and re-shipped via Asheville to Pinners Point, Va., or to Potomac Yard, Va., destined to eastern markets. The back-haul charge from all points between Paint Rock, N. C., and Asheville is 3 cents per 100 pounds, and the average distance 41 miles. The back-haul charge on

shipments from Paint Rock and intermediate points is 2 cents per 100 pounds, and the average distance 14.25 miles. The evidence shows that from stations between Paint Rock and Asheville the lowest local rate is 5 cents, the highest local rate is 6 cents, and the average local rate is 5.5 cents. We are of opinion and find that the amounts charged for the back hauls in question have not been shown to be unreasonable. *Spiegle v. S. Ry. Co.*, 25 I. C. C., 71, 72.

There is now no back-haul charge on shipments of lumber originating on defendant's line from Bristol or Johnson City, Tenn., to and including Morristown, Tenn., or west of Morristown, which are milled in transit at Bristol or Johnson City and shipped out under water competitive rates. These rates apply via defendant's Asheville route only from certain points in eastern Tennessee and western North Carolina to some 639 destinations on the eastern seaboard, either on or accessible to the water, to which the eastern lines on account of competition with sailing vessels and barges accept divisions or proportions lower than those required by such lines to destinations not affected by water competition. The record does not justify the contention that milling in transit with the back-haul charge in effect at Newport subjects complainants to unjust discrimination or results in undue preference or advantage to Johnson City or Bristol. Lumber dealers at Bristol have no transit on lumber originating at points south of Morristown. Dealers at Johnson City can not ship out their products at the water competitive rates from points south of Morristown, and have no transit on lumber originating at Paint Rock or east thereof. By permitting dealers at Johnson City and Bristol to mill lumber in transit without being subjected to a back-haul charge defendant is enabled to meet competition of the Norfolk & Western through Bristol and thus to secure the long haul by its own line through Asheville. Upon the facts disclosed of record we do not find that the so-called back-haul charges now in effect at Newport are unjustly discriminatory against complainants.

MINIMUM CHARGE.

Complaint is also made of the minimum charge of \$6 per car for milling in transit at Newport, and it is asserted that any minimum charge is violative of the order of the Commission in *Spiegle v. S. Ry. Co.*, 25 I. C. C., 71. When that case was considered the transit charge at Johnson City was 2 cents per 100 pounds, with a minimum charge of \$6 per car. In the report and order no reference was made to the minimum charge. It was not in issue and was not passed upon by the Commission. Nor was mention made in *Bristol Door & Lumber Company v. N. & W. Ry. Co.*, 25 I. C. C., 87, of the minimum

84 I. C. C.

charge at Bristol, which was then, as now, \$6 per car. Bristol, Johnson City, and Newport are on a uniform basis with respect to transit charges, which are imposed on the outbound shipment. Complainants' shipments average over 45,000 pounds. We do not find from the evidence that the application of a minimum charge of \$6 per car on lumber handled in transit at Newport is unreasonable.

REPARATION.

There remains for consideration the claim for reparation on shipments shown in an exhibit filed with the complaint and on shipments with respect to which evidence was submitted at the hearing. In *Spiegle v. S. Ry. Co.*, 25 I. C. C., 71, we held that the transit charge at Johnson City was unreasonable to the extent it exceeded 1½ cents. On January 15, 1913, the charge of 1½ cents was made effective at Newport as well as at Johnson City. Reparation is asked on all shipments that moved into Newport prior to that date. Some of these moved out of Newport before that date and some after. Whether before or after the transit charge of 2 cents, applicable when they left the point of origin, was still applicable. No reparation was granted or asked in the *Johnson City case*, and we do not think complainants have shown themselves entitled to reparation in this case.

The complaint will be dismissed, and if the matters referred to in the *National Casket case*, *supra*, and this case are not adjusted, they may be brought again to our attention.

34 I. C. C.

ST. LOUIS TERMINAL CASE.

No. 1515.

IN THE MATTER OF TERMINAL ALLOWANCES AND RATES AT ST. LOUIS, MO., AND EAST ST. LOUIS, ILL.

Decided June 28, 1915.

1. The operation of "off-track" freight stations by certain transfer companies in St. Louis as public freight stations of the carriers found not to be unlawful or to result in discriminations that are undue.
2. The constructive receipt and delivery of traffic at undefined points on the west bank of the Mississippi River found not to be available to all shippers and therefore condemned.

Randolph Laughlin for St. Louis Transfer Company.

Guy A. Thompson for Columbia Transfer Company.

H. R. Small for Ashley Warehouse Company.

Bryan & Christie and *P. W. Coyle* for Business Men's League of St. Louis.

John E. Hamlin for Commercial Club of East St. Louis.

Hupp Tevis for nonparticipating transfer and teaming companies.

O. E. Butterfield for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

James Hagerman and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

John Fitzgerald for Louisville & Nashville Railroad Company.

C. B. Northrop for Southern Railway Company.

Ralph M. Shaw for Chicago & Alton Railroad Company.

C. A. Schmettau for Toledo, St. Louis & Western Railroad Company.

Blewett Lee for Illinois Central Railroad Company.

Edward Barton for Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Complaints having been made by various operators of warehouses in St. Louis, and also by some individual shippers, in regard to the arrangements between interstate carriers and certain transfer companies for the handling of interstate shipments between certain rail

terminals in East St. Louis and the point of origin or ultimate destination in the city of St. Louis, the Commission, upon its own motion, entered upon this inquiry into the facts with a view to ascertaining whether the arrangements, and the allowances made thereunder by the carriers to the transfer companies, were in contravention of the act to regulate commerce.

The terminal rail facilities of St. Louis have not grown proportionately with the growth of the commerce and trade of the community, and some of its rail lines have been required to resort to the unusual means hereinafter described of handling their shipments into and out of the city. These methods have developed gradually and to some extent are an outgrowth of the necessities of the situation. It is a matter of no small importance therefore to the commercial welfare of the city to avoid any radical or unnecessary disturbance of existing conditions, and this is no less fully appreciated by the Commission than by those who have taken a special interest in the inquiry. Acting therefore upon the suggestion, developed during the course of the investigation, that the arrangements complained of would not improbably adjust themselves with the enlargement then thought to be in prospect, of the terminal rail facilities within the city, we have deferred action in the matter. A renewal of the complaints shows, however, that the hope of an improvement in the situation has not been realized. A further hearing was therefore had in order that the Commission might be advised as to what changes in conditions, if any, had occurred since the first hearing. But the final disposition of the matter has been delayed because certain of the general principles involved were under consideration in other proceedings. *Federal Sugar Refining Co. v. B. & O. R. R. Co.*, 17 I. C. C., 40; *Federal Sugar Refining Co. v. B. & O. R. R. Co.*, 20 I. C. C., 200; *United States v. B. & O. R. R. Co.*, 225 U. S., 306; *B. & O. R. R. Co. v. United States*, 200 Fed., 779; *United States v. B. & O. R. R. Co.*, 231 U. S., 274; and for the reason also that the whole terminal situation at St. Louis was under investigation in a suit by the government which has come to a conclusion in the Supreme Court of the United States in *United States v. Terminal R. R. Asso. of St. Louis*, 236 U. S., 194.

The facts as drawn from the whole record here before us are as follows: Prior to 1906 the St. Louis rates were based on the East St. Louis rates and were made by adding to the latter the charge for transferring the traffic across the river. The different companies operating the bridges and car ferries across the river did not apply the same classification that was applicable east of the river; this caused confusion and produced a general rate condition so unsatisfactory that the mayor of St. Louis, under the authority of a city ordinance,

appointed a representative committee, known as the Municipal Bridge & Terminal Board, for the purpose of taking measures looking to relief. The result of their conferences with the carriers having terminals in East St. Louis was an agreement whereby St. Louis and East St. Louis, together with Madison, Venice, and Granite City, were to be grouped together and take common rates to and from points in the territory east of the Mississippi and north of the Ohio rivers and outside a radius of 100 miles from St. Louis. When made effective this plan brought the whole group into the so-called percentage basis territory as a rate point. Theretofore East St. Louis had been in the 116 per cent zone. The new group was now settled at 117 per cent of the New York-Chicago rates, thus increasing the East St. Louis rates by 1 per cent and giving definite rates to the city of St. Louis, and rates that made substantially lower charges than its merchants had theretofore enjoyed.

As we have just said, St. Louis has long been suffering from inadequate terminal facilities; in addition to a lack of sufficient freight stations and team tracks, the general track facilities are more or less restricted and the terminals are therefore subject to congestion that is sometimes serious. In order more clearly to understand the situation it may be well here briefly to state the manner in which the terminals are operated, owned, and controlled:

The Terminal Railroad Association is owned by 14 of the larger and more important railroad systems that reach the city of St. Louis. Besides its own tracks, stations, and other facilities within the city limits, the terminal association also owns and controls all the railroad bridges, with one exception, and all the car ferries that cross the Mississippi River at that point. Some of the proprietary trunk lines have terminal facilities of their own, but they also use the facilities of the terminal association. Its rails are also used by a group of 7 lesser trunk lines, of which the Chicago & Eastern Illinois, the St. Louis & Southwestern, and the Toledo, St. Louis & Western are the strongest representatives. In other words, 21 different carriers use the tracks and other facilities of the terminal association. The traffic of 2 of these lines consists almost entirely of coal, and they need not, therefore, have further consideration in this report. Of the remaining 19 roads, 5 have terminals both in St. Louis and East St. Louis; among these we include the Missouri Pacific, because of its access to the terminals of the Iron Mountain. Five other lines have terminals in St. Louis only. The remaining 9 carriers have terminals in East St. Louis only. For convenience of reference in this report, the railroads entering the St. Louis territory will be grouped and referred to herein as the eastern and western lines. A number of the lines belong in both groups.

There are four means of transportation across the river, namely, the Eads bridge, the Merchants bridge, the Wiggins ferry, and the Interstate car transfer. The upper roadway of the Eads bridge is used for street cars, foot passengers, and vehicle traffic; the main roadway is used for steam railroad traffic. The Merchants bridge is operated for the exclusive use of rail lines. The Wiggins Ferry Company operates ferryboats for foot passengers and vehicles and also operates car ferries. The Interstate car transfer is a car ferry only. As we have stated, all these means, with the single exception mentioned, for crossing the Mississippi River at St. Louis are owned and controlled by the Terminal Railroad Association, and they are available for use by all the rail lines serving St. Louis and East St. Louis. The history of the association is explained in detail in *United States v. Terminal R. R. Asso. of St. Louis*, 224 U. S., 383, to which we have alluded. It should be added here, however, that the record shows that the facilities, just mentioned, for crossing the river have a capacity 40 per cent in excess of the maximum demand ordinarily made upon them. The congestion and delay heretofore mentioned in handling traffic in St. Louis are therefore due to other causes than a lack of facilities for reaching that point; the trouble grows largely out of the inadequate depot and other facilities on the west side of the river, and is experienced most acutely, if not altogether, in connection with less-than-carload traffic.

In making St. Louis a definite rate point as the result of the conferences between the carriers and the municipal body heretofore mentioned, the carriers laid themselves under the obligation of receiving traffic for through movement to and from that point under through bills of lading. The lines having terminals in East St. Louis only first undertook to do this by moving their freight across the river under an agreement with the terminal association. This required the association to adjust its rates to the basis of the ratings of the official classification. But it was found that the terminal association did not have sufficient facilities in the city of St. Louis to enable it to handle all the additional traffic with promptness. The eastern lines have terminals in East St. Louis only, and in order to offer the public a service that was sufficiently prompt to enable those lines to secure their fair proportion of the traffic, they were compelled to make arrangements with the companies hereinbefore referred to as transfer companies, to move the freight by wagon between St. Louis and East St. Louis. As a part of the arrangement, the transfer companies undertook also to furnish and operate stations in St. Louis where they could receive and deliver freight for the carriers.

These freight stations in St. Louis, hereinafter often referred to as "off-track" stations because they are not reached by the rails of any carrier, are in buildings owned or leased by the transfer companies and are operated by the transfer companies as agents of the carriers. Although the western lines have rail depots of their own in St. Louis, many, if not all, of them have made similar arrangements with the transfer companies under which the off-track stations of the eastern lines have become the freight stations also of the western lines, the transfer companies conveying in their wagons both carload and less-than-carload freight between these off-track stations and the rail stations of the western lines.

This arrangement was made by the carriers only with such transfer companies as had warehouses that could be used as freight stations. These are the St. Louis Transfer Company, the Columbia Transfer Company, the Fidelity Transfer Company, and the Central Transfer Company. Some of these stations are used only for inbound freight, and others only for outbound traffic, while still others are used for both inbound and outbound traffic. In most instances the first floor is considered the station of the carriers, the floors above being used by the transfer companies in their private business as warehousemen. Special attention is called to this fact because out of it grows one of the main contentions in this proceeding. Obviously the transfer companies that conduct a private warehouse business are enabled, under this arrangement, to save all cartage expense that other warehouse companies, not participating in this arrangement with the carriers, must pay. To express the thought more accurately, shippers and consignees who use for private storage the warehouses of the transfer companies in which freight stations are conducted are at no expense for cartage, while the merchants who use other warehouses for storage purposes must pay the cartage charges. The St. Louis Transfer Company conducts a private warehouse business in one of its buildings which adjoins and communicates with a building in which it operates a freight station for the carriers. The testimony affirmatively shows that not infrequently freight intended for storage is unloaded directly from the transfer company's wagons upon the warehouse elevators and lifted to the upper floors, where the private warehouse business is conducted. The off-track stations, however, are intended for the use of the general shipping public without restriction.

These freight stations proved to be a substantial aid in the prompt handling of traffic into and out of St. Louis. It was thought desirable, however, in order further to facilitate such traffic to undertake another and different form of service. Arrangements were made by the eastern lines with the same transfer companies, and also with

others as hereinafter explained, for hauling the traffic by wagon between the East St. Louis rail stations and the store doors of shippers and consignees in St. Louis, without passing it through the off-track stations hereinbefore described, but through what is referred to by the carriers as their "constructive" stations on the west bank of the river. These stations are simply undefined points on the river bank. They have no corporeal existence where the clerical work and manual labor incident to the forwarding and receiving of freight may be physically accomplished. No station agents are there to attend to the needs of the public. Nevertheless, by employing the transfer companies as their agents to haul the freight, both carload and less than carload, by wagon between their East St. Louis terminals and these imaginary stations, the eastern lines perform a "constructive" station service, making at the undefined point on the west bank a purely nominal or constructive delivery of the inbound shipment and in the same manner an imaginary acceptance of outbound traffic, the freight not being moved from the wagon in either case. At this undefined point the relation of the transfer company to the carrier undergoes a change. On the inbound traffic the transfer company there ceases to be the agent of the carrier and at the same instant becomes the agent of the shipper, and on the outbound traffic it there ceases to be the agent of the shipper and becomes the agent of the carrier. At that moment and in that sense the constructive station service by the carrier occurs. The rail rate takes the traffic to and from the constructive points on the west bank of the river, the cartage charges of the transfer companies being paid by the carriers; but the shippers and consignees pay the cartage charges between the incorporeal station and their store doors. The contracts between the transfer companies and the railroads provide that the transfer companies shall charge the shippers and consignees as much for carrying their shipments between store doors and the constructive station as they would charge for carting freight a like distance to and from the regular rail stations and off-track stations in the city of St. Louis. It is our understanding, however, that for this cartage by the transfer companies there is no fixed rate, the charges being controlled wholly by competitive conditions.

In receiving and delivering freight at this constructive station on the west bank of the river the eastern lines have not restricted the wagon service to the four transfer companies above mentioned. There are 18 other transfer companies, more or less, which act in this way as agents for the carriers and get allowances for the cartage service between the rail ends in East St. Louis and the constructive or imaginary stations. These are smaller companies, and many of them confine their service to particular shippers; they do not undertake

drayage for the general shipping public. In some instances clerks or other employees of large shippers have incorporated a transfer company, upon the understanding with the shipper that the company shall have all his traffic and will not take any outside traffic. We do not understand that in any such case the transfer company is owned directly or indirectly by the shipper. A well-known hardware house which is a very large shipper, is a typical instance; it has such an arrangement with a transfer company not owned by it, but owned and operated by its employees. The eastern lines, following the theory heretofore outlined, have made this transfer company their agent to convey the freight of the hardware company from their rail ends in East St. Louis to the imaginary point or constructive station on the west bank of the river and there to make constructive delivery of it to the hardware company. Although organized to handle the shipments of the hardware company exclusively, and under conditions that forbid it from handling the traffic of others, the transfer company is said not to be the agent of that shipper until its wagons leave the constructive station on the west bank. As the carriers' agent it is paid by the carriers for carting the freight of the hardware company across the river. It is not clear from the record that it receives any compensation from the hardware company for hauling its traffic beyond that point to its warehouses.

Besides operating the off-track stations in their warehouses, as hereinbefore explained, the transfer companies perform certain other services as agents of the carriers. For example, they undertake to quote rates to shippers. They collect charges on shipments and remit the amounts to the carriers. It is said that they perform also much of the general clerical service that is performed at a regular railroad freight station. But they do not issue bills of lading; they issue dray tickets on outbound shipments, which may be surrendered to the carriers by the shipper for a bill of lading. In handling traffic to and from the constructive stations, however, nothing of this kind is done by the transfer companies.

In order to complete our understanding of the situation, some reference should now be made to the allowances received by the transfer companies from the carriers in compensation for their services, as outlined in what precedes. These allowances vary greatly, depending upon the commodity, the quantity, and upon certain territorial restrictions. For the present purpose, however, it will be sufficient to consider them in a general way. On less-than-carload traffic handled through the off-track stations and through the constructive stations, when originating at or destined to points east of the Indiana-Illinois state line and north of the Ohio River, 2 cents per 100 pounds is allowed the transfer companies.

On carload traffic to and from the same territory 1 cent per 100 pounds is allowed when delivery is made through the constructive stations, the off-track stations not being open to carload traffic to and from this territory. Such traffic, however, may be delivered through the constructive stations under the 1-cent allowance, and thence be transferred by wagon at the expense of the consignee to the warehouses of the transfer companies in which the off-track stations are located. On traffic to and from points west of the Indiana-Illinois state line handled through the off-track stations, the eastern lines allow the transfer companies on less-than-carload shipments 5 cents per 100 pounds and on carloads 4 cents per 100 pounds, and when traffic to and from this territory is handled through the constructive stations the allowances are on less-than-carload traffic 2 cents and on carload traffic from 1½ cents to 1 cent. Substantially the same allowances are made to and from southeastern territory. The western lines make no allowances on traffic to and from points east of the Indiana-Illinois state line and north of the Ohio River. On traffic to and from other territories, however, they allow on less than carload 3 cents and on carload 2 cents. In most cases the allowances on less-than-carload traffic are restricted by the western lines to outbound business. It is understood, however, that in no case is the off-track station service restricted by any of the lines to freight that is intended for storage or to freight that has been stored in the warehouses of the transfer companies.

The first question arising out of these facts is whether the rail lines may lawfully operate off-track stations in this manner. On this point, and in the light of the principles announced in *United States v. B. & O. R. R. Co.*, 225 U. S., 306, reversing the rulings of this Commission upon facts very analogous to those disclosed on this record, there is no need for any extended discussion. The carriers could buy or rent similar property in the city of St. Louis and through their own employees could operate such facilities both as a convenience for shippers and as a means of securing traffic that otherwise might be lost to them. The contention that there is anything unlawful in that respect must therefore be overruled.

Much of the complaint that has been made of these relations between the favored transfer companies and the carriers proceeds from rival warehouse companies. Their contention is that discriminations grow out of these arrangements. In *Jones v. St. L. & S. F. R. R. Co.*, 12 I. C. C., 144, however, we held that an owner of real estate, as such, has no special rights under the act to regulate commerce. To the same extent we think that a warehouseman, as such, has no special rights under the act. But when a warehouseman acts as a consignee or consignor he becomes a shipper and has all the rights of a

shipper under the act. He stands, in fact, in the shoes of a shipper and may make any complaint either of rates or practices that his principal, the real shipper, might himself make. Now, we have not hereinbefore called attention to a fact shown of record, namely, that the transfer companies that operate off-track stations for the carriers not infrequently act also as consignees and consignors; they also act as forwarders in the sense that carload shipments are billed to them by manufacturers and others and their contents are subsequently distributed by them to the different actual consignees. They offer to perform this service and are paid for it by shippers. So far as the rail carriers are concerned they are shippers in all such cases. And it is in that capacity that rival warehousemen in St. Louis here complain of them. They allege that the favored transfer companies enjoy unlawful preferences as warehousemen, and that these advantages grow out of the special relations which they enjoy with the carriers. These contentions are based on the fact that when the transfer companies, as private warehousemen, act as consignees of shipments intended by the real shipper for storage in their warehouses, they get a delivery from the carriers at their private warehouses without expense. On the other hand, competitors are at a substantial expense for cartage when they act as consignees. The matter works out in this way: As agents of the carriers the favored transfer companies take the shipments at the expense of the carriers to the first floor of their respective warehouses, this being the so-called off-track station of the carriers. The shipment is there unloaded directly upon the elevator that takes it upstairs into private storage. The entire expense of putting the shipment on the elevator is borne by the carrier. The carrier even unloads the shipment from the car on its rails onto the wagon of the transfer company; and the allowance by the carriers to the transfer company not only covers that expense on less-than-carload shipments, and in some cases on carload shipments, but it is sufficient to include the cost of operation, depreciation, and all similar factors of expense in conducting the transfer service, and also embraces a satisfactory profit.

As consignees of both carload and less-than-carload traffic it therefore appears that the transfer companies are absolutely free of expense with the shipment f. o. b. the elevator and ready to go upstairs into this private warehouse for storage. Rival warehouses enjoy no such advantage, but are at a substantial expense for cartage. The favored companies admit that they have this advantage. They contend, however, that it results from the fact that their private warehouse business is conducted in the floors immediately above the off-track station, which they operate on the first floor of their warehouse for the carriers. They say that this is an advantage growing

out of the proximity of their place of private business to the place where they act as agents of the carriers. They contend that they would have practically the same advantage if their private warehouse were across the street from the building in which they operate a station for the carriers. But in that case the shipper by wagon or other means would take delivery at the carrier's off-track station and have to move the traffic across the street by wagon or other means involving expense. The illustration therefore does not reach the point, for the two situations present conditions that are dissimilar, the one involving a substantial expense and the other practically no expense at all. As we understand the precise details of the manner in which the off-track station is operated by the transfer company for the carriers and the manner in which the so-called private warehouse is operated by the transfer company in its own interest, there is without question a mixing of the transportation service with its private service as a warehouseman. Wagons containing such shipments are not unloaded in the off-track stations, there to be delivered to the shipper, but, in many cases at least, are unloaded onto the elevator. Although this reaches the first floor it is no part of the off-track station; it is merely an appliance for conducting the warehouse business on the floors above. In other words, the transfer companies, as consignees or shippers, have the traffic loaded out of the cars into the wagons and thence hauled to the off-track station of the carrier and there loaded onto the elevator that is to take it immediately into private storage, all at the expense of the carrier.

It is this advantage that has built up the private warehousing business of the favored companies and has minimized the business of the outside warehouses. The practical results to the one and the disadvantages to the other are manifest. But, as we have said, the warehouseman, as such, has little legal basis for complaint against such an arrangement by a carrier with his competitors. As a consignor or consignee of merchandise committed to his custody for forwarding or for storage, a warehouseman is a shipper, and in that capacity may bring any grievance to our attention that grows out of the rates and practices of the carriers; but under *Interstate Commerce Commission v. Peavey & Co.*, 222 U. S., 42, and *United States v. B. & O. R. R. Co.*, 231 U. S., 274, we must hold that the advantage enjoyed, in their private capacity, by the warehousemen conducting the off-track stations for the respondents, is incidental and not undue, under the act to regulate commerce as amended. These conclusions rest upon the finding that the off-track stations are in good faith kept open to all shippers as public freight stations of the carriers, this being the test applied in *United States v. B. & O. R. R. Co.*, *supra*.

Our attention is attracted, nevertheless, to the unusual practice on the part of the western carriers of furnishing a station service for carload traffic at their off-track stations, when such traffic can be handled to and from their own rails in St. Louis. Carload rates are usually lower than less-than-carload rates, and one of the reasons for this is the fact that the carload traffic is not usually handled through stations. Freight moving in such quantities is customarily unloaded from the car on the tracks by the consignee at his own expense. Certain of the western carriers, however, give to much of their carload traffic a less-than-carload service through the off-track stations at St. Louis. For example, the Chicago & Eastern Illinois assumes the cartage cost of 2 cents per 100 pounds on carload traffic handled by transfer companies from its St. Louis team tracks and the team tracks of the terminal railroad association to its off-track stations. The probable purpose of such allowances by that line and other western carriers is to meet the similar practice of eastern lines. The result, however, is a saving in cartage charges to the shippers, who find it convenient to use for storage purposes the warehouses of the transfer companies in which are operated the off-track stations; while carload shippers over these lines who desire to use their own or other warehouses for storage purposes must themselves bear the cost of cartage. The opportunity to use the warehouse above the off-track station is nevertheless open alike to all carload shippers over these lines, and while the use thereof is attended by pecuniary advantages which the exigencies of business will not permit all shippers to enjoy, we are of the opinion that such advantages, being identical with those attending a similar service by eastern lines, are not undue.

Our examination of the record has led us to think, and we have heretofore said, that the eastern and other lines have made use of the services of the transfer companies instead of using the facilities of the St. Louis Terminal Association between East St. Louis and St. Louis, because it enabled them to handle their inbound and outbound traffic with less delay and with greater convenience. We had been under the impression, also, that there was a general advantage and convenience to merchants of St. Louis in having these additional means for handling traffic into and out of the city, particularly because of the restricted character of the rail facilities within the city. It should be said, however, that this view is not concurred in by some who have given earnest study to the matter. A report filed of record dated June 7, 1912, of the special committee of the business men's association, which has long been making efforts to secure improved terminal conditions at St. Louis, has this to say on that point:

The transfer allowance made by the railroads terminating at East St. Louis to certain drayage companies for hauling freight between East St. Louis and St. Louis

in the protection of the rates between St. Louis and eastern points, regardless of whether or not such drayage companies have depots in St. Louis, is, in the opinion of your committee, a great menace to the rate adjustment obtained by the Municipal Bridge and Terminals Commission, and retards the development of terminals in St. Louis, as it removes the incentive to the quick handling of freight directly to and from St. Louis proper by rail. The discriminatory privilege granted by the Terminal Railroad Association and the railroads to individuals and drayage companies hauling freight over the roadway of the Eads bridge and the ferries, whereby under certain conditions free transportation across the river is given; also retards the development of terminals in St. Louis, and both of these practices are serious obstacles to the work of the league through its traffic bureau in securing improved merchandise or package car service for this city and should be discouraged, and the terminal facilities of the railroads in St. Louis used to the fullest extent possible.

A statement of this kind, coming as it does from an organization composed of business men who doubtless have had an extensive personal experience as shippers, carries great weight and should have the greatest consideration. It is directed, however, to a question of business policy with respect to matters that rest largely within the discretion of the carriers themselves, and with which we can not interfere in the absence of any violation of the provisions of law.

In the preceding pages we have described in detail the constructive receipt and delivery of traffic by the east side lines at the undefined points on the west bank of the river and have explained the allowances made by the carriers to certain transfer companies designated in their tariffs for hauling the traffic by wagon between these imaginary terminals and the actual stations and terminal tracks of the carriers in East St. Louis. The so-called off-track stations conducted for the carriers by the transfer companies in their warehouses in St. Louis have also been described at length. These are actual stations at which a physical station service is performed by the transfer companies as agents of the carriers. Employees are there in attendance to serve the public in connection with their traffic and to afford shippers the same service in many respects that they receive at the ordinary rail stations. But the constructive stations of the carriers on the west bank of the river have no physical being and no railway employees are there in attendance on the public. No physical service is there performed and, in fact, nothing occurs on the west bank of the river except as a purely mental operation; at the undefined point the transfer company is said to cease to be the agent of the shipper and at the same instant is said to become the agent of the carrier with respect to outbound traffic, and vice versa with respect to inbound traffic. The delivery by the carrier of the inbound traffic to the shipper at that point is not an actual delivery, nor does the carrier in any physical sense accept the outbound traffic at that point. The delivery and the acceptance are constructive only.

Transportation is a very practical public service, and the laws for its regulation were intended to deal with actual rather than with constructive or imaginary things. And yet, while not sanctioning such a practice, we are not to be understood, in the light of a record relating only to one community, as condemning the constructive acceptance and delivery of freight at a wholly constructive terminal solely because there is no physical station there nor any acceptance or delivery of traffic in a physical sense. It is because we find from the facts adduced of record in this case that the practice leads to unjust discriminations that we feel compelled to condemn it.

The off-track stations, as we have explained, are open to the whole public, and we understand that the whole public in a very substantial way makes actual use of them. On the other hand the constructive or imaginary terminals on the west bank of the river are open to the general public only in a constructive sense. Nevertheless the whole public does not and in fact can not make even a constructive use of them. Not being stations in a physical sense they are available only to a limited class of shippers, namely, those who use the services of the public transfer companies designated in the tariffs of the carriers and those whose traffic is large enough to warrant the organization of a transfer company which, while nominally incorporated to serve the general public, actually performs no public service, but restricts its operations to the carting of the traffic of the particular shipper. The undefined points on the west bank are not therefore public stations in the sense that any shipper in his own way may accept or deliver his traffic there, but only in the limited sense that particular shippers using the particular means mentioned are able to accept and deliver their traffic there in the constructive way hereinbefore described.

These restrictions and limitations in our judgment result in definite discriminations that are unlawful. In actual practice the east side lines at their expense cart the inbound traffic a part of the way to the store doors of particular shippers and also at their expense cart the outbound traffic of particular shippers a part of the way to their rail ends in East St. Louis. The transfer companies contend that this service is open to the whole public. In a measure this is true. But however the service may be analyzed we come finally to see that a substantial number of shippers must pay to third persons selected by the carriers a cartage charge for handling their traffic to and from these constructive stations, and they are thereby compelled to let their own horses, wagons, and similar equipment stand idle.

It seems to be agreed both by the east side lines and by the transfer companies, by which the burden of presenting the case was largely assumed, that the carriers' service begins and ends at the undefined point on the west bank of the river, according as the traffic is out-

bound or inbound. The undefined point, if comparable with anything physical, must therefore be regarded as taking the place of a station for less-than-carload traffic and a team track for carload traffic. In either case the right to use this constructive service is limited to shippers who approach the constructive terminals through the agency of transfer companies designated by the carriers. They may not, with their own vehicles, go to the constructive stations to deliver or receive their traffic. In other words, the right of a shipper to have an east side line extend its service to and from these undefined points depends upon his willingness to employ the carrier's agent to haul his traffic between those points and his store door. If he employs a transfer company designated by the carrier he may have the service; if he uses his own vehicle the service is denied to him. The result is an unjust discrimination which must be corrected.

No order will be entered at this time, but we shall expect the carriers promptly to adjust their practices to conform to the findings and conclusions herein announced.

34 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 544.
SAND AND GRAVEL RATES FROM WISCONSIN POINTS TO
CHICAGO, ILL., AND OTHER POINTS.

Submitted March 12, 1915. Decided June 29, 1915.

Proposed increased rates on sand and gravel in carloads from certain grouped points in Wisconsin to Chicago, Ill., and other Illinois points increasing the differential over the rates to the same points from nearer grouped points, found not to have been justified.

R. H. Widdicombe for Chicago & North Western Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company

C. E. Pierce for Janesville Sand & Gravel Company.

F. J. Sullivan for Fisher Sand & Gravel Company.

Adams & Edgar for Beloit Sand & Gravel Company.

J. J. O'Laughlin for Waukesha Lime & Stone Company.

B. H. Atwood for Atwood-Davis Sand Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Respondents group the stations on their lines from which sand and gravel move to Chicago, Ill., into two zones called the inner and outer zones. By tariffs, filed to take effect between November 15, 1914, and February 1, 1915, respondents proposed to increase the rates on sand and gravel from outer zone points in Wisconsin to Chicago from $1\frac{1}{2}$ cents to $2\frac{1}{2}$ cents per 100 pounds, and to certain other points in Illinois from $2\frac{1}{2}$ cents to 3 cents per 100 pounds. Upon protests by shippers located at Janesville and Beloit, Wis., the tariffs were suspended until September 15, 1915, and December 1, 1915. Respondents proposed simultaneously to increase the rates from points in the inner zone, in Illinois, from $1\frac{1}{2}$ cents to 2 cents per 100 pounds. These rates were stated at the hearing to have been suspended by the Public Utilities Commission of Illinois and not yet adjudicated.

The interstate rates involved were considered in *Investigation and Suspension Docket Nos. 88 and 88-A*, 24 I. C. C., 249, which concerned the propriety of an increase of from $1\frac{1}{2}$ cents to 3 cents per 100 pounds in the rates on sand and gravel from shipping stations in the outer zone to Chicago and its suburbs. The increase was found not justified. A 2-cent rate proposed simultaneously for shipments from inner zone points, in place of a rate of $1\frac{1}{2}$ cents, was condemned by the

state commission. The report cited discusses fully the history of the rates involved, together with other pertinent facts and the various contentions advanced by respondents in justification of the higher rates proposed. The same contentions are advanced in this proceeding, which is tantamount to a rehearing of the case cited.

Shippers from outer zone points are less concerned with the rate than with the maintenance of the present differential of one-fourth cent per 100 pounds between the inner and outer zones. A differential in excess of one-fourth cent per 100 pounds, equivalent to 7½ cents per cubic yard of sand, would render it impossible for them to compete in the Chicago market with pits in the inner zone, as stated in our former report. The rates proposed increase the differential to one-half cent per 100 pounds, or 15 cents per cubic yard. The present rates undoubtedly are low in comparison with rates on the same commodities for similar distances elsewhere. Slight increases recognizing the long standing relationship between the inner and outer zones might be warranted but not any change in the differential. No material changes in the conditions surrounding the transportation are shown that would justify a greater differential than the differential previously prescribed.

Upon all of the facts of record we find that respondents have not justified an increase in the differential and that the rates from points in the outer zone should not exceed the rates contemporaneously in effect from points in the inner zone by more than one-fourth cent per 100 pounds. An order will be entered requiring respondents to cancel the tariffs suspended.

84 I. C. C.

No. 7074.
CHARLES ESTE COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted October 2, 1914. Decided June 2, 1915.

1. Demurrage charges at Pinners Point, Va., on a carload of lumber shipped from Lamar, S. C., destined to Portsmouth, Va., found to have been unlawfully assessed.
2. Penalty charge for nonfulfillment of certain obligations to vendee is in the nature of consequential damages, for the satisfaction of which recourse must be had to the courts.

No appearance for complainant.
R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with offices at Philadelphia, Pa. By complaint, filed July 1, 1914, it alleges that the demurrage charges collected by defendant, Atlantic Coast Line Railroad Company, hereinafter designated Coast Line, at Pinners Point, Va., on a carload of lumber shipped from Lamar, S. C., were unjust and unreasonable. Reparation is asked.

No representative of complainant appeared at the hearing, but the record discloses that on September 22, 1913, there was shipped from Lamar over the Coast Line one carload of lumber weighing 52,300 pounds consigned to Charles Este Company, Portsmouth, Va., "Del. U. S. Navy Yard." A through rate of 13 cents per 100 pounds was applied, the freight charges amounting to \$67.99. The Coast Line does not reach Portsmouth. Its haul terminates at Pinners Point, where traffic for delivery at Portsmouth is delivered to the Seaboard Air Line, hereinafter referred to as the Seaboard. The car reached Pinners Point on September 24. On September 25 postal notice was sent, in accordance with the billing, to the consignee at the United States navy yard, Portsmouth. In the bill of lading the car number was erroneously given as 20260. The correct number was 70260, and this number appeared in the notice sent. Consignee was located at Philadelphia and apparently never received the

notice. On October 7 the agent of the Coast Line at Norfolk, Va., wired complainant at Philadelphia as follows:

Car A. C. L. 70260 since September 24. Notified you care navy yard. No response. Freight demurrage date, \$76.97.

On October 8 complainant replied to the Coast Line agent that it did not consider that the car was its property until it arrived at Portsmouth; that the agent of the Seaboard at Portsmouth had been furnished an order to deliver the car upon arrival to the general storekeeper of the Norfolk navy yard; and that it was not liable for any demurrage that had accrued. The Coast Line, however, refused to deliver the car to the Seaboard until all freight and demurrage charges were paid, and on October 30, after further correspondence, complainant mailed a check for \$97.99 to the Coast Line agent to cover the freight charges and \$30 demurrage. The car was released and turned over to the Seaboard October 31. Complainant was on the weekly credit list of the Seaboard, at Portsmouth, and maintains that if the car had been delivered to that line advance payment of the freight charges would have been unnecessary. The reparation asked includes the sum of \$4.51 assessed against complainant by the United States government as a penalty for failure to deliver the car at the navy yard within the stipulated time. The amount of the demurrage is not disputed.

In *Miller & Co. v. P. M. R. R. Co.*, U. R. No. A-309, there was presented a somewhat analogous situation. Tariffs of the defendant carriers provided that carload freight for delivery to terminal carriers within the Chicago switching district would not be delivered to such carriers until the freight charges thereon were paid. We held that demurrage charges which had accrued while cars were being held for payment of freight charges were unlawfully assessed, and said:

There was a joint through rate that should have been applied to the shipment, in view of which there was no authority for the application of the rule referred to in the Chicago switching tariff. There should have been no detention of the car at Tracy avenue yards, but it should have been promptly delivered at Harvey under the joint through rate.

See also *Iglehart v. Pa. Co.*, U. R. No. A-228.

In the instant case tariffs of the Coast Line require the prepayment of freight charges on all shipments consigned to the United States government at the Portsmouth navy yard, but this shipment was not so consigned. Neither the Coast Line tariffs nor those of the Seaboard appear to have provided for the payment of freight charges as a prerequisite to the release of cars to the switching line.

The Coast Line takes the position that neither tariff regulation nor custom obligated it to notify the switching line of cars detained under the circumstances here involved or to tender shipments to switching line for delivery until freight charges have been paid. Its tariff, however, held out a through rate of 13 cents Lamar to Portsmouth. The Seaboard did not concur in this rate, but the Coast Line provided in the tariff for absorption of the Seaboard's switching charges from Pinners Point to Portsmouth. The Coast Line contracted to carry shipments to Portsmouth and may not at will say as to this shipment "we must be paid before we will surrender to the Seaboard."

On the facts of record we hold that the course pursued by the Coast Line was not justified and that the demurrage charges which were collected as a result of the detention of the car were unlawful.

The penalty charge imposed by the United States government and sought to be recovered is in the nature of consequential damages. Recourse must be had to the courts for satisfaction of such damages. We therefore make no finding with respect thereto.

As has been stated, complainant remitted to the Coast Line the amount of the freight and demurrage charges. It was not represented at the hearing, however, and we are unable on the record to determine the party actually damaged. The case will be held open, and if within 60 days from the service hereof a stipulation is filed that complainant ultimately bore the unlawful demurrage charges and is the party damaged, we will consider the entry of an award of reparation.

No. 3918.

J. J. MEREDITH, SHELBY TAYLOR, AND HENRY B. SCHREIBER, CONSTITUTING THE RAILROAD COMMISSION OF LOUISIANA,

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

Submitted April 9, 1915. Decided June 17, 1915.

1. The evidence upon supplemental hearing shows no material change in transportation conditions over the lines of defendants, either from or toward Shreveport, since this proceeding was first before the Commission.
2. Class rates prescribed for transportation from Shreveport to points in eastern Texas, and also from points in eastern Texas toward Shreveport, on the lines of all the defendants.
3. As the transportation conditions for the competitive hauls here involved are substantially similar, justice demands that the same classification shall apply to all, and consequently that the western classification shall govern on traffic via the lines of these defendants from points in eastern Texas toward Shreveport.
4. It is unjust discrimination for defendants to charge higher rates upon any commodity from Shreveport into eastern Texas than are contemporaneously charged for the carriage of such commodity for an equal distance from points in eastern Texas toward Shreveport; and such commodity rates should not exceed, distance considered, the corresponding class rates named herein.
5. It constitutes unjust discrimination against Shreveport for defendants to charge higher inbound rates on uncompressed cotton from eastern Texas to Shreveport for concentration there than they contemporaneously charge, distance considered, on uncompressed cotton to concentration points in eastern Texas.

R. G. Pleasant, W. M. Barrow, L. M. Walter, G. T. Atkins, jr., and E. C. Cottingham for Railroad Commission of Louisiana and Shreveport Chamber of Commerce.

H. M. Garwood for Houston, East & West Texas Railway Company; Galveston, Harrisburg & San Antonio Railway Company; Houston & Shreveport Railroad Company; Texas & New Orleans Railroad Company; Houston & Texas Central Railroad Company; Burr's Ferry, Browndel & Chester Railway Company; and San Antonio & Aransas Pass Railway Company.

J. R. Christian and F. H. Wood for Houston, East & West Texas Railway Company; Galveston, Harrisburg & San Antonio Railway Company; Houston & Shreveport Railroad Company; Texas & New Orleans Railroad Company; Houston & Texas Central Railroad Company; and Burr's Ferry, Browndel & Chester Railway Company.

J. L. West and A. H. McKnight for Missouri, Kansas & Texas Railway Company of Texas and Texas Midland Railroad.

L. M. Hogsett for International & Great Northern Railway Company and its receivers.

E. A. Haid and *W. F. Murray* for St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; and Eastern Texas Railroad Company.

J. H. Souby and *H. A. Weaver* for Texarkana & Fort Smith Railway Company and Kansas City Southern Railway Company.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company; Texas & Gulf Railway Company; and Gulf & Interstate Railway Company of Texas.

J. B. Payne for Texas & Pacific Railway Company.

R. O. McCormack for Fort Worth Chamber of Commerce and Fort Worth Freight Bureau.

G. S. Maxwell for Dallas Chamber of Commerce.

E. F. Hollies for Texarkana Freight Bureau.

REPORT OF THE COMMISSION UPON SUPPLEMENTAL HEARING.

HALL, Commissioner:

Our first report and order in this proceeding were made March 11, 1912, in 23 I. C. C., 31. From that order the defendant carriers appealed to the Commerce Court, where it was upheld on April 25, 1913, in 205 Fed., 380, and the latter decision was affirmed by the Supreme Court of the United States on June 8, 1914, in *Houston & Texas Ry. v. United States*, 234 U. S., 342.

The order, save in so far as it required the establishment of new rules to govern the concentration of cotton moving in interstate commerce, ran only against three defendants, Texas & Pacific Railway Company, Houston, East & West Texas Railway Company, and Houston & Shreveport Railroad Company. It required the establishment by them of specified class rates on shipments by their lines from Shreveport, La., to specified destinations in Texas, and those rates were established and made effective July 1, 1912. It further required that these three defendants "abstain from exacting any higher rates for the transportation of any article" from Shreveport to Dallas, Tex., and points intermediate via the line of the Texas & Pacific, and from Shreveport to Houston, Tex., and points intermediate via the lines of the Houston, East & West Texas and the Houston & Shreveport, "than are contemporaneously exacted for the transportation of such article from Dallas or Houston for an equal distance toward said Shreveport." It was to this latter portion of the order that the carriers directed their opposition on the final appeal. Pending decision of the appeal the effective date of this portion of the order, which directed removal of the discriminatory variance between the state and interstate rate structures on those three lines from and toward Shreveport, was successively postponed until August 1, 1914.

The case again comes before us on a petition filed June 18, 1914, by the proper authorities of the state of Louisiana, praying a supplemental order. Thereupon, by order entered June 23, 1914, all the defendant carriers were required to show cause why such supplemental order should not issue. The order prayed for would require: (1) The establishment of reasonable class rates from Shreveport, such as were previously prescribed over the lines of the three defendants, to all points on the lines of all the defendants; and (2) the application of no higher rates upon all commodities from Shreveport to all points on the lines of all defendants than are contemporaneously maintained for like distances from any points on said lines eastbound to destinations in Texas. The petition alleges that no new or changed conditions have arisen since the first hearing and order; that the other defendant carriers will not establish a uniform scale of rates except upon such a supplemental order; and that as a result shippers over the three lines whose rates have been adjusted in conformity with the order of March 11, 1912, will have an undue advantage.

Such being the record, further hearing was had at Shreveport on October 27, 1914. Prior thereto petitioners gave notice that at such hearing they would offer evidence to support the grant of the following "specific relief":

1. Rates established by the Commission on class, as well as commodity traffic, should apply "between" on all shipments from or to Shreveport, La., to or from all points located on the lines of the respondents in the state of Texas.

2. The scale of class rates which this Commission found just and reasonable and ordered established by the respondents Houston, East & West Texas Railway, Houston & Shreveport Railroad, and Texas & Pacific Railway, should be applied on all shipments taking class rates to or from Shreveport, from or to points located on the lines of all other respondents than those named in this paragraph.

3. Reasonable commodity rates should be applied on all commodities moving from points located on the lines of the respondents in the state of Texas to Shreveport, La., or from Shreveport to said Texas points, observing the class scale found reasonable by this Commission as a maximum.

4. Concentration of cotton from Texas points should be permitted at Shreveport, La., at rates no higher for the haul into concentration point than Texas competitors pay for similar distances, and rules and policing of concentration privileges at Shreveport should be the same as enjoyed by shippers of cotton in Texas at the concentrating points in said state.

5. Respondents should apply the rules and regulations of western classification now in effect on all shipments from or to points on the lines of the respondent in Texas or should apply Texas lines classification on all shipments from or to Shreveport, La., to or from points on the lines of respondents in the state of Texas.

6. Rates, rules, and regulations covering the transportation of all carload and less-than-carload traffic, whether commodity or class rates, should be the same, distance considered, in all the territory lying east of a line drawn through Gainesville, Fort Worth, Waco, and thence with the Brazos River, whether moving wholly within the state of Texas on the lines of the respondents or from or to Shreveport, to or from such Texas points.

Commercial organizations of Fort Worth, Tex., and Texarkana, Ark.-Tex., filed petitions of intervention. For Fort Worth it was contended that any broadening of our orders herein would unduly discriminate against it. For Texarkana it was asked that any further relief for Shreveport should extend to Texarkana. Both petitions seek to enlarge the real issues in this supplemental proceeding and must be denied.

The Texas Railroad Commission was represented at the hearing but entered no appearance of record. During the hearing the petitioners moved that the Houston & Texas Central Railroad Company, the Texas Midland Railroad, and the San Antonio & Aransas Pass Railway Company be made parties to the proceeding, and each entered appearance of record and waived notice. Petitioners also moved that the so-called Frisco lines in Texas be made parties by their consent, but no appearance or waiver of notice was made by these lines.

The evidence upon supplemental hearing shows no material change in transportation conditions over the lines of defendants, either from or toward Shreveport, since this proceeding was first before us. Rules substantially similar to those in effect in Texas have been established at Shreveport to govern the concentration of Texas cotton. The three defendants affected by that part of our original order which relates to rates have complied therewith, and the Missouri, Kansas & Texas Railway Company of Texas has voluntarily established a similar basis of rates in both directions over its line east of Greenville, Tex., i. e., its Shreveport division. The other defendants continue in effect from Shreveport the same adjustment of rates which we found unreasonable and unjustly discriminatory in March, 1912. Their Shreveport to Texas class rates in many instances are the same as, and sometimes exceed, the rates found by this Commission in June, 1912, to be just, reasonable, and nondiscriminatory express rates for the same hauls. *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, and 28 I. C. C., 131. Of necessity it follows that now, as in 1912, these carriers unlawfully and unduly prefer the cities of eastern Texas, and now, as then, unjustly discriminate against Shreveport.

The prayer in the petition for supplemental order is that such order shall extend to the lines of the other defendants a structure of rates similar to that established on the lines of the three defendants by our order of March 11, 1912. This prayer is, however, much broadened in the statement of "specific relief" above set out and supported by petitioners' evidence upon supplemental hearing, at which petitioners stated of record that they sought a readjustment of rates not limited to any prescribed territory, and an order applying to all these defendants, governing all traffic to and from Shreveport and all points on their lines, and between all points on their lines

on the local business; in other words, a readjustment over practically the whole of Texas.

From the inception of this proceeding its essence has been the discrimination between Shreveport and eastern Texas, as appears in our original report herein, 23 I. C. C., 31, at 33. This record contains nothing, except a tentative agreement between the parties, upon which to go further and fix reasonable maximum rates, both class and commodity, effective over all the lines of all these defendants throughout the great state of Texas. In line with our action of March 11, 1912, we shall confine our further order to the territory between Shreveport on the east and a line drawn through Gainesville, Fort Worth, and Waco, Texas, thence via the Brazos River to the Gulf of Mexico, on the west. This western boundary is suggested in the petitioners' statement of "specific relief," and is fairly indicated in the record as the line up to which Shreveport should be protected. We shall refer to that part of Texas on and east of this line as eastern Texas. Limited to this territory we shall now deal with the specific relief sought.

CLASS RATES.

The class rates prescribed by this Commission from Shreveport to Texas points in 1912 were based on the mileage scale prescribed by the Texas commission for intrastate traffic. In our original report, *supra*, 23 I. C. C., 31, at 45, the Commission found that "the class rates of the Texas commission within the distances here involved are not too low." The Texas commission class rate scale "runs out" at 245 miles; that is, the scale for 245 miles applies on all hauls in excess thereof. Petitioners admit that the 245-mile scale does not return fair compensation to the carriers for hauls beyond that distance. They show a great similarity between the Texas commission scale up to 245 miles and the so-called Texas-Oklahoma scale prescribed in *Corporation Commission of Oklahoma v. A. & S. Ry. Co.*, 26 I. C. C., 520. They suggest that at about 245 miles the Texas commission scale may well merge into the Texas-Oklahoma scale, and the latter be used for hauls in excess of 245 miles.

In so far as this record bears on the subject it indicates that as between Shreveport and eastern Texas the conditions of transportation are substantially similar to the conditions between Texas and Oklahoma. The Texas-Oklahoma scale applies on traffic between Oklahoma and points in eastern Texas located only a few miles west of Shreveport. Our conclusion is that to whatever extent this present petition demands the establishment of class rates on hauls beyond 245 miles the Texas scale should, at about that distance, merge into the Texas-Oklahoma scale.

Upon this basis we construct the following distance scale of class rates, as maxima.

Rates in cents per 100 pounds for single line application. By "single line" is meant one line of railroad, or two or more lines of railroad under the same management and control.

Distances (in miles).	1								
10 and less	13								
12 and over 10	14								
15 and over 12	15								
18 and over 15	16								
21 and over 18	17								
24 and over 21	18								
27 and over 24	19								
30 and over 27	20								
33 and over 30	21								
36 and over 33	22								
39 and over 36	23								
42 and over 39	24	22	20	18	16	14	11	9	7
45 and over 42	25	23	21	19	17	15	12	10	8
48 and over 45	26	24	22	20	17	16	12	10	8
51 and over 48	27	25	23	21	18	19	13	11	8
54 and over 51	28	26	24	22	19	19	13	11	9
57 and over 54	29	27	25	23	19	20	14	12	9
60 and over 57	30	28	26	24	19	20	14	12	9
63 and over 60	31	28	26	24	20	21	15	13	10
66 and over 63	32	29	27	25	20	21	15	13	10
69 and over 66	33	30	28	26	21	22	15	13	10
72 and over 69	34	31	29	27	21	22	15	13	10
75 and over 72	35	32	30	28	22	23	17	14	11
78 and over 75	36	33	31	29	22	23	17	14	11
81 and over 78	37	34	32	30	23	24	18	14	11
84 and over 81	38	35	33	31	23	24	18	14	11
87 and over 84	39	36	34	31	24	25	19	15	12
90 and over 87	40	37	35	32	24	25	19	15	12
93 and over 90	41	38	36	33	25	26	20	16	13
96 and over 93	42	39	37	34	25	26	20	16	13
99 and over 96	43	40	37	34	26	27	21	16	13
102 and over 99	44	41	38	35	26	27	21	16	13
105 and over 102	45	42	39	36	27	28	22	17	14
108 and over 105	46	43	40	37	27	28	22	17	14
111 and over 108	47	44	41	38	28	29	23	17	14
114 and over 111	48	45	41	39	28	29	23	17	14
117 and over 114	49	46	42	40	29	30	24	18	15
120 and over 117	50	47	43	41	29	30	24	18	15
124 and over 120	51	47	43	41	30	31	25	18	15
128 and over 124	52	48	44	42	30	31	25	18	15
132 and over 128	53	49	45	43	31	32	25	18	15
136 and over 132	54	50	46	43	31	32	25	18	15
140 and over 136	55	51	46	44	32	33	26	19	16
144 and over 140	56	52	47	45	32	33	26	19	16
148 and over 144	57	53	48	46	33	34	27	19	16
152 and over 148	58	54	49	47	33	34	27	19	16
156 and over 152	59	55	50	48	34	35	27	20	16
160 and over 156	60	56	51	49	34	35	28	20	16
164 and over 160	61	56	51	49	35	36	28	20	16
168 and over 164	62	57	51	49	35	36	28	20	16
172 and over 168	63	58	52	50	36	37	29	20	16
176 and over 172	64	59	53	51	36	37	29	21	16
180 and over 176	65	60	54	52	37	38	30	21	16
184 and over 180	66	61	55	53	37	38	30	21	16
188 and over 184	67	62	56	54	38	39	30	21	16
192 and over 188	68	63	57	55	38	39	30	21	16
196 and over 192	69	64	58	56	39	40	31	22	17
200 and over 196	70	65	58	56	39	40	31	22	17
204 and over 200	71	65	58	56	40	41	31	22	17
210 and over 205	72	66	59	57	40	41	32	23	17
215 and over 210	73	67	60	57	41	42	32	23	17
220 and over 215	74	68	60	57	41	42	32	23	17
225 and over 220	75	69	61	58	42	43	33	23	17
230 and over 225	76	70	62	58	42	43	33	23	17
235 and over 230	77	70	62	58	43	44	33	23	17
240 and over 235	78	71	63	59	43	44	34	23	18
245 and over 240	79	71	63	59	43	45	34	23	18
250 and over 245	80	72	64	60	44	45	34	24	19
255 and over 250	81	73	65	61	44	46	35	24	19
260 and over 255	82	74	66	62	45	46	35	25	20
265 and over 260	83	75	67	63	45	47	36	25	20
270 and over 265	84	76	68	64	46	48	36	26	20
275 and over 270	85	77	69	65	47	49	37	27	21
280 and over 275	86	78	70	66	47	49	37	27	21
285 and over 280	87	79	71	67	48	50	38	28	22
290 and over 285	88	80	72	68	48	50	38	28	22
295 and over 290	89	81	73	69	49	51	39	29	23
300 and over 295	90	82	74	70	49	51	39	29	23
305 and over 300	91	83	75	71	50	52	40	30	24
310 and over 305	92	84	76	72	50	52	40	30	24
315 and over 310	93	85	77	73	51	53	41	31	25
320 and over 315	94	86	78	74	51	53	41	31	25
325 and over 320	95	87	79	75	52	54	42	32	26
330 and over 325	96	88	80	76	52	54	42	32	26
335 and over 330	97	89	81	77	53	55	43	33	27
340 and over 335	98	90	82	78	53	55	43	33	27
345 and over 340	99	91	83	79	54	56	44	34	28
350 and over 345	100	92	84	80	54	56	44	34	28
355 and over 350	101	93	85	81	55	57	45	35	29
360 and over 355	102	94	86	82	55	57	45	35	29
365 and over 360	103	95	87	83	56	58	46	36	30
370 and over 365	104	96	88	84	56	58	46	36	30
375 and over 370	105	97	89	85	57	59	47	37	31
380 and over 375	106	98	90	86	57	59	47	37	31
385 and over 380	107	99	91	87	58	60	48	38	32
390 and over 385	108	100	92	88	58	60	48	38	32
395 and over 390	109	101	93	89	59	61	49	39	33
400 and over 395	110	102	94	90	59	61	49	39	33
405 and over 400	111	103	95	91	60	62	50	40	34
410 and over 405	112	104	96	92	60	62	50	40	34
415 and over 410	113	105	97	93	61	63	51	41	35
420 and over 415	114	106	98	94	61	63	51	41	35
425 and over 420	115	107	99	95	62	64	52	42	36
430 and over 425	116	108	100	96	62	64	52	42	36
435 and over 430	117	109	101	97	63	65	53	43	37
440 and over 435	118	110	102	98	63	65	53	43	37

For joint line application the rates shall be made by adding to the rates prescribed in the above table the following amounts, in cents per 100 pounds:

Class.....	1	2	3	4	5	A	B	C	D	E
Rates.....	8	7	6	5	4	4	4	3	2	2

By "joint line" is meant two or more lines of railroad not under the same management and control.

When the sum of the rates prescribed for single line application is less than a joint rate made in accordance with the above instructions, the joint rate shall not exceed such sum of rates.

Rates so made not to exceed the following for distances not exceeding 450 miles:

Class.....	1	2	3	4	5	A	B	C	D	E
Rates.....	106	91	76	66	52	53	49	40	32	28

An order will be issued directing defendants to establish and maintain rates no higher than those above found to be reasonable, where not already established, from Shreveport to points in eastern Texas, as defined in this report, and also from points in eastern Texas toward Shreveport.

CLASSIFICATION.

Shipments from Shreveport to Texas destinations are subject to the western classification. Shipments from Texas cities to the same Texas destinations are subject to the Texas classification. The petitioners contend that an equalization of the class rates *per se* will not remove existing unjust discrimination on class-rate traffic, because the Texas classification is more "liberal to the shipper" than is the western classification, and they ask that interstate shipments from Shreveport and eastern Texas intrastate shipments be made subject to one and the same classification.

The evidence on behalf of both petitioners and carriers bears out the contention that the Texas classification is, on many articles, more liberal to the shipper than is the western. Generally speaking, the minimum carload weights provided in the Texas classification are lower than in the western, the usual or standard being in the former 24,000 pounds as against 36,000 pounds in the latter.

Unquestionably the situation between Shreveport and its Texas competitors is such that unless the same classification applies unjust discrimination results. The western classification governs interstate transportation in the territory surrounding Shreveport, including transportation between Texas points and points in other states. In large part it has received the indorsement of this Commission. *Western Classification case*, 25 I. C. C., 442. Considering the finding already made that transportation conditions for the competitive hauls here involved are substantially similar, justice demands that the same classification shall apply to all, and consequently that the western classification shall govern on traffic via the lines of these defend-

ants from points in eastern Texas toward Shreveport. The order herein will so provide.

COMMODITY RATES.

The petitioners have submitted many comparative statements showing that on a distance basis the commodity rates applying from Shreveport to eastern Texas are much higher than the Texas state rates on the same commodities to the same points. All of this accentuates what we found to be the situation in 1912. Among the articles on which Shreveport shows it thus suffers unjust discrimination are crude oil, hides and wool, common brick, window glass, tight barrels, wooden handles, hardware, agricultural implements, wholesale groceries, saddlery, vehicles, wholesale produce, and automobiles. As to these and many others the petitioners and carriers have, since the close of the hearing, compiled and submitted to the Commission an agreed set of commodity rates, constructed on a mileage scale. We are asked to name, by appropriate order of this Commission, specific rates on these many commodities, to govern their transportation between Shreveport and points in Texas, and practically throughout the entire state of Texas.

For the reasons already made clear we find ourselves unable to comply with this request. We do not find in this record all that would be necessary to support such an order could we lawfully make it. Neither do we find evidence as to what the specific maximum commodity rates should be. The record does show, however, that Shreveport should be protected against unjust discrimination in favor of points in eastern Texas. As to that territory, our order will provide that the defendants shall cease and desist from charging higher rates upon any commodity from Shreveport into eastern Texas, as defined in this report, than are contemporaneously charged for the carriage of such commodity for an equal distance from points in eastern Texas toward Shreveport, and will further require that such commodity rates shall not exceed, distance considered, the corresponding class rates already named herein.

RATES TO SHREVEPORT ON EAST TEXAS COTTON.

It has already been observed that the defendants now maintain at Shreveport, as to cotton from Texas points, concentration rules and practices substantially similar to the rules and practices which they maintain on Texas cotton at concentration points within eastern Texas. This, however, has not removed all the unjust discrimination from which Shreveport suffered and continues to suffer as a cotton concentration point.

Cotton from eastern Texas moves uncompressed into concentration points in that region on rates which, distance considered, are with few exceptions much lower than the rates on which such cotton moves into Shreveport for concentration. The inbound rates into Shreveport are higher, also, than the mileage scale governing the intrastate movement of uncompressed cotton into concentration points in Arkansas and Mississippi. In some cases they exceed the through rate from point of origin through Shreveport to final destination. The cotton factor at the concentration point customarily pays these inbound rates at the time of the inbound movement. Subsequently the compressed cotton moves from the concentration point to ultimate destination upon through rate from point of origin, and the inbound charges are then refunded to the factor. During the interim the Shreveport factor on the present rate adjustment has a larger portion of his capital tied up in paid expense bills, covering the inbound movement of his cotton, than have his eastern Texas competitors. We have already held that the conditions of the transportation here concerned are similar, and we now hold that it constitutes unjust discrimination against Shreveport for these defendants to charge higher inbound rates on uncompressed cotton from eastern Texas to Shreveport for concentration there than they contemporaneously charge, distance considered, on uncompressed cotton to concentration points in eastern Texas. An appropriate order will issue requiring the removal of this discrimination and the establishment for future use of rates to Shreveport on eastern Texas cotton for concentration no higher than defendants contemporaneously charge on a distance basis for the transportation of cotton to concentration points in eastern Texas.

No. 6687.
F. W. STOCK & SONS
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 10, 1914. Decided June 17, 1915.

The through rate on wheat, all rail, from Minneapolis, Minn., via Chicago, Ill., and Hillsdale and Litchfield, Mich., to New York, N. Y., and to other points taking New York rates, is 1 cent per 100 pounds higher than on flour. The aggregate rate on wheat shipped from Minneapolis, milled in transit at Hillsdale or Litchfield, and forwarded thence as flour to New York, is 1.7 cents higher than on flour. Said aggregate rate held to be unduly and unreasonably prejudicial and disadvantageous to complainant to the extent that it exceeds by more than the established transit charge the rate contemporaneously in effect on flour from Minneapolis to New York and to other points taking New York rates. *Federal Milling Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 27 I. C. C., 696, cited and followed.

Charles Conradis and A. B. Hayes for complainant.

O. W. Dynes and J. G. Love for Chicago, Milwaukee & St. Paul Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company.

W. G. Wagner for Chicago, Burlington & Quincy Railroad Company.

G. A. Kelly and J. G. Morrison for Chicago Great Western Railroad Company.

W. W. Collin, jr., for Lake Shore & Michigan Southern Railway Co., New York Central & Hudson River Railroad Company, and West Shore Railroad Company.

James Stillwell for Pennsylvania Company and Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

This is a complaint by a corporation engaged in milling wheat into flour at Hillsdale and Litchfield, Mich. The allegation is that rates on wheat and flour from Minneapolis, Minn., to New York, N. Y., and other points taking New York rates, are unjustly prejudicial to complainant. It is also alleged that the rate on wheat from Minneapolis to New York, milled in transit at complainant's mills, is unreasonable. At the hearing the evidence was directed largely to the discriminatory feature of the rate adjustment, and we do not

have evidence sufficient to determine that the rates on flour and wheat from and to the points involved, in effect at the time of the hearing, were unreasonable. All rates in this report are stated in cents per 100 pounds.

Hillsdale is on the main line of the New York Central Railroad, formerly the Lake Shore & Michigan Southern Railway, about 178 miles east of Chicago, Ill. Litchfield is on the Lansing, Mich., branch of that railroad about 11 miles north of Hillsdale. Complainant buys in Minneapolis its principal supply of spring wheat for grinding. At the time of the hearing the through rate from Minneapolis to New York and points taking the same rate was 26 cents on wheat, 25 cents on flour, and 26.7 cents on wheat milled into flour at complainant's mills. From tariffs on file with the Commission it appears that these rates have since been increased to 26.8 cents, 25.8 cents, and 27.5 cents, respectively, effective January 20, 1915. Complainant was and is thus at a disadvantage of 1.7 cents as compared with the shipper of flour from Minneapolis. In addition, complainant pays a transit charge of one-half cent, making its total disadvantage 2.2 cents. *Stock & Sons v. L. S. & M. S. Ry. Co.*, 31 I. C. C., 150. No complaint is made of the transit charge.

The through rate of 26, now 26.8, cents on wheat is made by combination of a rate from Minneapolis to Chicago of 10 cents and a reshipping rate of 16, now 16.8, cents from Chicago to New York. The joint through rate of 25, now 25.8, cents on flour, which is 1 cent less than that on the raw material, wheat, is divided between the carriers on the basis of 8.3 cents for the haul from Minneapolis to Chicago and 16.7, now 17.5, cents from Chicago to New York. West of Chicago the carrier receives 1.7 cents more on wheat than on flour. East of Chicago the carrier receives 0.7 of 1 cent more on flour than on wheat.

In *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C., 351, 363, we said:

This policy seems on many grounds to be a sound one as applied to this territory. In common practice a manufactured product usually takes a higher rate than the raw material from which it is made; but if a higher rate be demanded on flour than is collected on wheat the tendency of the adjustment would be to concentrate the milling interests toward the east. On the other hand, if flour should be given a lower rate than wheat, the tendency would be to concentrate the milling interests as near to the wheat fields as possible, for traffic ordinarily moves not only on the cheapest rates, but in the cheapest form. The maintenance of a parity of rates on wheat and flour tends to equalize conditions at all points at which milling enterprises may exist. The importance to millers generally of such an adjustment of rates is fully conceded by the counsel for the complainants. * * *

No order can therefore properly be entered at this time with respect to the eastern proportionals; but without expressing any final opinion, it may be well to say that we see no reason why the absolute parity of rates west of Chicago and St. Louis should not be extended through to the seaboard.

In *Jennison Co. v. G. N. Ry. Co.*, 18 I. C. C., 113, 118, it is said:

In the *Bulte case* the Commission found that the transportation charges on wheat and on flour from the west and northwest ought to be on a substantial parity, and we see no reason for changing that conclusion.

The disadvantage to the complainant under the rate adjustment now in effect is similar to the disadvantage to the complainant in *Federal Milling Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 27 I. C. C., 696. The complainant here, as there, finds in the Minneapolis miller its chief competitor in the sale of spring wheat flour. The larger part of complainant's spring wheat flour is sold at New York or eastern trunk line points, where it meets flour from Minneapolis which has moved on the lower through rate. In the *Federal Milling Co. case* we said, p. 698:

We have recently considered in *Board of Trade of the City of Chicago v. C. & A. R. R. Co.*, 27 I. C. C., 530, the question of the reasonableness of the rate of 10 cents on wheat from Minneapolis to Chicago and there found that that rate was not unreasonable or unduly prejudicial. In that case the carriers expressed a willingness to put into effect a rate of 25 cents from Minneapolis to the east on wheat, with the privilege of milling in transit at Chicago, in equalization of practically the same disability at Chicago of complainant at Lockport with respect to the 25-cent rate on flour to the east from Minneapolis. We find no justification upon this record for a higher rate on wheat than on flour between Minneapolis and New York, and we think an arrangement similar to that proposed at Chicago should be made effective on wheat milled at Lockport.

Examination of the record in the *Federal Milling case* shows that the same contentions were made by the defendants there as here. To justify the lower rate on flour than on wheat from Minneapolis to New York, it is claimed in both cases that wheat would not move through by rail on a lower rate unless that were brought down to the level of water rates, which is impracticable, while the rate maintained on flour secures large consignments. In other words, the defendants assert that competitive conditions via Duluth, Minn., and the lakes justify the lower rate on flour. We are not convinced from this record that the justification has been made.

For reasons given in the *Federal Milling case* and on the facts appearing in this record we find that defendants' all-rail rate on wheat shipped from Minneapolis, milled in transit at Hillsdale or Litchfield, and forwarded thence as flour to New York is, and for the future will be, unduly and unreasonably prejudicial and disadvantageous to complainant to the extent that it exceeds by more than the established transit charge the rate contemporaneously applied by them to the transportation of flour from Minneapolis to New York and to other points taking New York rates. This undue and unreasonable prejudice and disadvantage must be removed, and our order will so provide.

There is not sufficient proof of damage to warrant a finding that complainant is entitled to reparation.

No. 6030.
SPARTANBURG CHAMBER OF COMMERCE
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted October 15, 1914. Decided June 28, 1915.

Upon complaint that defendants' class and commodity rates to Spartanburg, S. C., from eastern points, both all rail and ocean and rail; from Buffalo-Pittsburgh territory; from Ohio and Mississippi river crossings and points in central freight association territory; and from Virginia cities are unreasonable and unjustly discriminatory, *Held*:

1. The ocean-and-rail rates from eastern points to Spartanburg via the port of Charleston, S. C., are unjustly discriminatory in so far as they exceed the ocean-and-rail rates to Charlotte, N. C.
2. All-rail rates from the east to Spartanburg are unjustly discriminatory in so far as they exceed the all-rail rates to Charlotte by more than the rates to Spartanburg from the Virginia cities exceed the rates to Charlotte from the Virginia cities.
3. Defendants' fourth section application seeking authority to charge joint through rates from eastern points to Spartanburg higher than the combinations on Norfolk, Va., denied.
4. Rates from Ohio and Mississippi river crossings and points in central freight association territory to Spartanburg on traffic moving through Ohio River crossings and Asheville, N. C., are unjustly discriminatory in so far as they exceed the rates to Charlotte.
5. Rates from Buffalo-Pittsburgh territory and from the Virginia cities to Spartanburg not shown to be unreasonable or unjustly discriminatory.

Wimbish & Ellis, W. A. Wimbish, and J. H. Earle for complainant.
R. Walton Moore and C. D. Drayton for defendants.

Ernest Williams for Charleston & Western Carolina Railway Company.

H. G. Waring for Seaboard Air Line Railway.

J. J. Campion for Carolina, Clinchfield & Ohio Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is an association of the commercial, financial, and industrial interests of the city of Spartanburg, S. C. By complaint, filed August 25, 1913, and amended August 4, 1914, it attacks the general adjustment of class and commodity rates to Spartanburg from eastern points, both all rail and ocean and rail; from Buffalo-Pittsburgh territory; from Ohio and Mississippi river crossings and points in central freight association territory; and from the Virginia cities, as unreasonable and unjustly discriminatory.

Since the filing of the original complaint, as a result of our decisions in *Rates to North Carolina Points*, 29 I. C. C., 550, and *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, certain changes, hereinafter noted, have been or will be made in the rates to Spartanburg and other points in the southeast from both the east and the west. In view of the present and proposed adjustment the allegations of discrimination in favor of Atlanta and Athens, Ga., have not been pressed, and it is admitted by complainant that the principal issue now before us is whether or not the rates to Spartanburg are unjustly discriminatory against that point in favor of Charlotte, N. C. What Spartanburg is now asking is that its ocean-and-rail rates from the east and the all-rail rates from the west be no higher than those contemporaneously maintained to Charlotte, and that the all-rail rates from the east to Spartanburg be made on the basis of the same revenue per ton-mile as is yielded by the rates to Charlotte, or that they should not exceed the Charlotte rates by more than the rates to Spartanburg from the Virginia cities exceed the rates from the Virginia cities to Charlotte. It appears that dealers at Charlotte and Spartanburg are in competition in the surrounding territory and that the lower rates to Charlotte constitute a disadvantage against complainant's members. Rates are stated herein in cents per 100 pounds.

The following table shows the first-class rates all rail and ocean and rail from Boston, Mass., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., to Charlotte, Spartanburg, Athens, and Atlanta.

From—	To Charlotte.		To Spartanburg.		To Athens.		To Atlanta.	
	All rail.	Ocean and rail.	All rail.	Ocean and rail.	All rail.	Ocean and rail.	All rail.	Ocean and rail.
Boston.....	\$1.08	\$0.96	\$1.31	\$1.19	\$1.17	\$1.05	\$1.17	\$1.05
New York and Philadelphia..	1.03	.91	1.26	1.14	1.17	1.05	1.17	1.05
Baltimore.....	.97	.85	1.19	1.07	1.10	.98	1.10	.98

Spartanburg is in the northwest portion of South Carolina, in what is known as the Piedmont region. It is on the main line of the Washington-Atlanta division of the Southern Railway, 76 miles southwest of Charlotte and 192 miles northeast of Atlanta. The line of the Southern Railway from Knoxville, Tenn., through Asheville, N. C., the Carolina, Clinchfield & Ohio Railway, and the Charleston & Western Carolina Railway also reach Spartanburg. Charlotte is on the main line of the Washington-Atlanta division of the Southern, and is also reached by the Norfolk Southern Railroad and the Seaboard Air Line. Athens is at the end of a branch line of the Southern Railway which extends 39 miles from Lula, Ga., a point

on the Washington-Atlanta division, and is 165 miles from Spartanburg via this route.

We will consider the rates to Spartanburg here involved in the following order: Rates from the east; rates from the west; rates from Buffalo-Pittsburgh territory; and rates from the Virginia cities.

RATES FROM THE EAST.

We will take up, first, the ocean-and-rail rates; next, the all-rail rates; and then the joint through rates that exceed the combinations on certain of the Virginia cities.

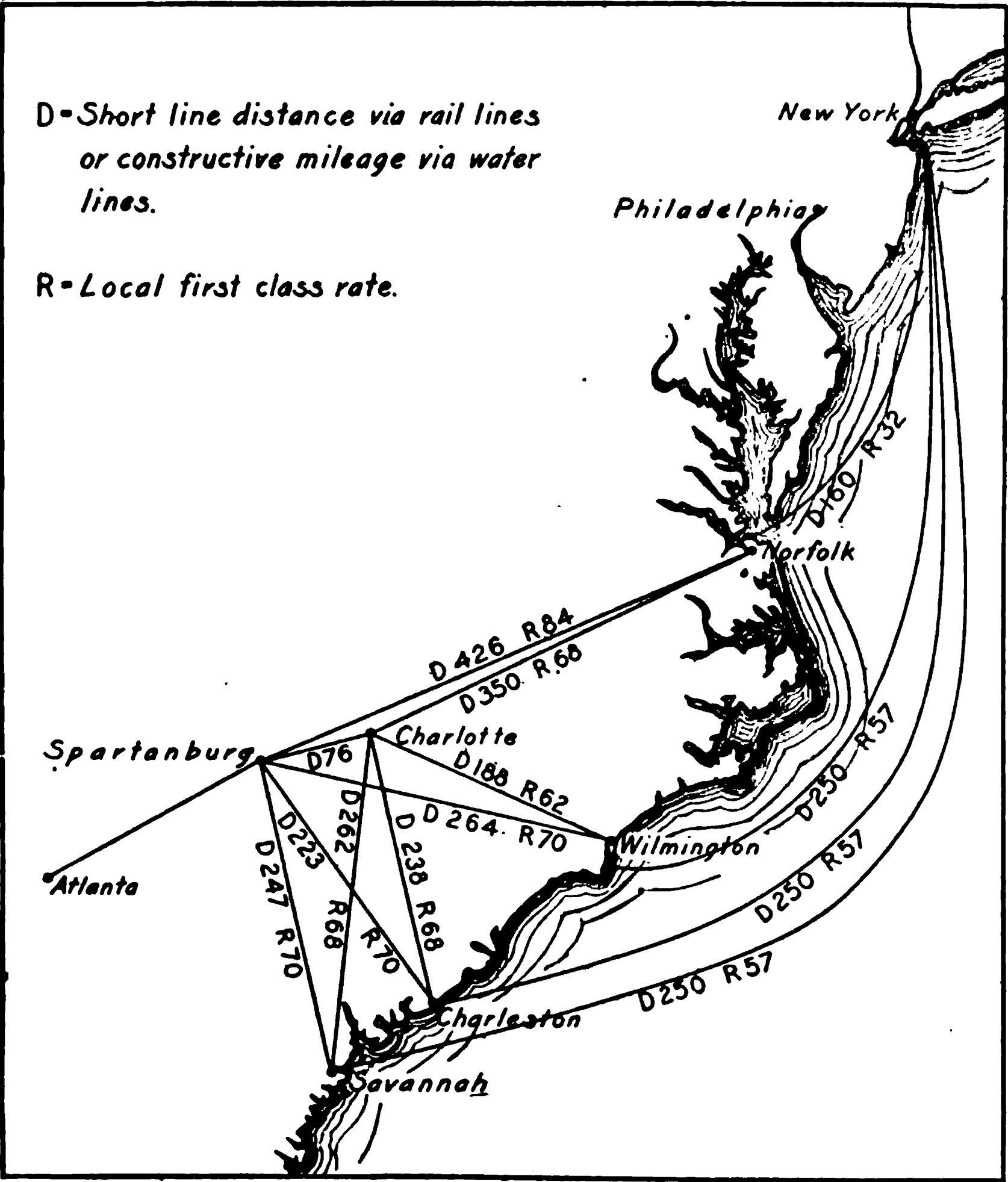
About 99 per cent of the traffic from the north Atlantic ports to the southeast moves ocean and rail. It is asserted by complainant that the joint through rates from eastern port cities, Baltimore, Philadelphia, New York, and Boston, to destinations in North Carolina, South Carolina, and the southeast are made and divided upon the basis of the ocean haul from these points to the south Atlantic ports and the rail haul to destination; that this is the correct distance by which the transportation service and the rate should be measured; and that the basic rates being thus established the all-rail rates are made differentials higher, beginning with 12 cents first class.

In dividing these ocean-and-rail rates it appears that a constructive water mileage is used. This accepted basis is, north of Cape Hatteras, 2 nautical miles equivalent to 1 land mile; south of Cape Hatteras, 3 nautical miles to 1 land mile. The constructive water distances used from these eastern points to certain of the south Atlantic ports are as follows:

From New York, Philadelphia, and Baltimore to Wilmington, Charleston, and Savannah.....	Miles. 250
From Boston to Norfolk, Wilmington, Charleston, and Savannah.....	300
From New York to Norfolk.....	160
From Baltimore to Norfolk.....	100

The shortest distance from any Atlantic port to Charlotte is that from Wilmington, N. C., 188 miles. From Charleston to Charlotte the short-line distance via the Southern Railway is 238 miles, and from Norfolk to Charlotte it is 350 miles via the same road. The shortest distance from any south Atlantic port to Spartanburg is that from Charleston, 223 miles. The short-line distances to Spartanburg are: From Savannah, 236 miles; from Norfolk, 426 miles; and from Wilmington, 264 miles. The accompanying map illustrates the location of Charlotte and Spartanburg, the short-line distances from the ports, and the constructive water mileage between the different ports. It also shows the local first-class rates from the ports to both points.

The local first-class rates from Norfolk, Wilmington, and Charleston to Charlotte are 68, 62, and 68, respectively, while to Spartanburg they are, respectively, 84, 70, 70. It is asserted that the first-class local rate via the steamship lines from New York to Norfolk is 32 and from New York to Wilmington, Charleston, and Savannah 57. The Norfolk rate has probably been increased to 33.6 as a result of the



Five Per Cent case, 32 I. C. C., 325. These local port to port rates are not filed with us, but the steamship lines publish proportional rates from north Atlantic ports to south Atlantic ports, applicable on business originating beyond, which are in certain instances lower than the local rates.

The rates from north Atlantic ports are made differentials over or under the New York rate. The following table shows the joint 34 I. C. C.

through ocean-and-rail rates on the first six classes and the distances from New York, as a representative point, to Spartanburg, Charlotte, and Atlanta:

From New York to—	Miles.	1	2	3	4	5	6
Charlotte.....	438	91	80	67	53	46	36
Spartanburg.....	473	114	98	86	73	60	49
Atlanta.....	510	105	93	83	68	56	44

In computing the above distances the constructive water mileage of 250 miles, plus the rail haul via the short line from the nearest port to the respective destinations, has been used, the distance to Charlotte being figured through Wilmington and that to Spartanburg through Charleston. On this same basis the distance from New York to Charlotte through Norfolk is 510 miles, and by this route Spartanburg is 76 miles farther. The distance to Charlotte through Charleston is 488 miles.

The ocean-and-rail rates to Charlotte include no insurance, while those to Spartanburg do include insurance. The marine insurance on these different classes amounts to 8, 6, 5, 4, 3, 2. It is urged that to properly compare these rates the insurance should be added to the Charlotte rates. Defendants say that the first-class rate from New York to Charlotte is in error and should be 92 cents. Making this correction and adding insurance to the Charlotte rates, the insured ocean-and-rail rates from New York to Charlotte and Spartanburg on the numbered classes are as follows:

To—	1	2	3	4	5	6
Spartanburg.....	\$1.14	\$0.98	\$0.86	\$0.73	\$0.60	\$0.49
Charlotte.....	1.00	.80	.72	.57	.49	.38
Difference.....	.14	.12	.14	.16	.11	.11

These differences in the rates in favor of Charlotte represent the discrimination complained of.

Complainant insists that since the water-and-rail distance to Charlotte through any south Atlantic port except Wilmington is greater than the distance to Spartanburg through the port of Charleston, Spartanburg is entitled to rates no higher than those to Charlotte. It argues that Wilmington should not be considered, as it is a differential port through which traffic from the east does not move, it having only one sailing a week from New York and no regular sailings from other north Atlantic ports. Charleston has three sailings a week from New York and one each from Boston and Baltimore. Norfolk has daily sailings from New York, Boston, and Baltimore.

It appears that the traffic from this territory to both Spartanburg and Charlotte moves principally through the ports of Charleston and Norfolk. The movement through Savannah to Charlotte and Spartanburg is small, and it does not appear that any volume of traffic moves through Wilmington to those points.

Defendants assert that, while the rates to Spartanburg were probably originally made by combination through south Atlantic ports, they have not been so made since 1887 but, on the contrary, have been made with relation to the Atlanta rates as maxima. This will be further explained in discussing the all-rail rates. They urge that the ocean-and-rail rates are not made with reference to the constructive mileage to the ports and assert that the only fair standard by which to measure the rates into this territory is to consider the actual charge for the transportation service from New York to Charleston as against the charge for the actual service from New York to Norfolk plus rail charges from those respective ports to Spartanburg and Charlotte. They say that, while it is true that a longer water haul is involved from north Atlantic ports to Charleston than to Norfolk and a shorter rail haul from Charleston to Spartanburg than from Norfolk to Spartanburg, this theoretical advantage is more than neutralized by the rates in effect; that is to say, the difference between the first-class rate from New York to Charleston and New York to Norfolk is 23.4 cents in favor of Norfolk, whereas the difference between the local rate from Charleston to Spartanburg and from Norfolk to Spartanburg is 14 cents in favor of Charleston, leaving a net difference of 9.4 cents in favor of the Norfolk route. They argue that, measured by the rates in effect, the cost of service to both Spartanburg and Charlotte via the Norfolk route is a little lower than via any other route; that this is the route by which the through rates have been and are made; that via this route the service to Spartanburg is greater than to Charlotte; and that, while the route through Wilmington is not an influential one, it is at least potential, as the Seaboard Air Line operating from that port has no route from Charleston. No figures showing the cost of transportation on any traffic to Spartanburg have been introduced. We are not considering combination rates but joint through rates.

The ocean-and-rail rates are the following differentials under the all-rail rates on the first six classes: 12, 10, 9, 8, 6, and 5, and it is asserted that the water lines demand the maintenance of these differences. The rail carriers contend that these differentials are too great, as the service by the steamship lines is more expeditious than via rail lines.

The question of whether or not the constructive water mileage plus the rail haul from the port is the rate-making distance to points in

the southeast was before us in *Atlanta Freight Bureau v. N., C. & St. L. Ry.*, 29 I. C. C., 476, and in our report in that case we said:

The complainant insists that this total of 510 miles is to be considered as the rate-making distance, while the defendants carefully distinguish it as the prorating distance. The force of this distinction is not altogether apparent, since if the water lines are willing to accept divisions as for 250 miles of rail haul, Savannah may be considered to be 250 rail miles from New York, Philadelphia, or Baltimore, and Atlanta likewise 510 miles.

We see no reason for a different conclusion in the instant case. Using the constructive mileage through the port of Charleston, the distances to both Spartanburg and Charlotte are shorter than through any other port, except Wilmington. It does not appear that the volume of the traffic through Wilmington is sufficient to make that port an influential factor in the making of rates to these points. The circumstances and conditions at Charleston are not shown to be so dissimilar from those existing at Norfolk as to warrant a finding that the route through Norfolk should be given a preference. The mileages to the different ports having been established by the carriers, it is apparent that the short-line mileage from Charleston to both Charlotte and Spartanburg, added to the mileage to the port, makes a shorter distance from New York to each of these points than the route via Norfolk. We are not convinced that it is proper to measure the rate to Spartanburg via Norfolk rather than via Charleston, or that it is not unjustly discriminatory to charge Spartanburg higher rates than are charged Charlotte via the route through Charleston.

Defendants urge that insurance should be added to the rates to Charlotte in order to properly compare them with the rates to Spartanburg. This we have done above. As has been seen, the water lines demand differentials under the all-rail rates of 12, 10, 9, 8, 6, and 5. The differences between the insured ocean-and-rail rates on the first six classes to Charlotte and the all-rail rates are only 3, 4, 4, 4, 3, 3. Defendants assert, however, that the rates to Charlotte which do not include insurance bear the proper relation to the all-rail rates. We do not think it proper to use rates to Charlotte which include insurance as a comparison in support of one contention, and then say that the rates to Charlotte which do not include insurance should not be used to sustain another point.

From all the facts and circumstances of record we are of opinion, and find, that it is and for the future will be unjustly discriminatory to charge rates ocean and rail from eastern seaboard territory and interior eastern points to Spartanburg, through the port of Charleston, higher than are contemporaneously maintained to Charlotte.

Coming now to the all-rail rates from the east, the following table shows the all-rail rates on the first six classes and the distances via

Potomac Yards, Va., from New York to Charlotte, Blacksburg, S. C., Spartanburg, Athens, and Atlanta:

From New York to—	Miles.	1	2	3	4	5	6
Charlotte.....	608	103	90	76	61	52	41
Blacksburg.....	655	115	102	88	73	60	48
Spartanburg.....	684	126	108	95	81	66	54
Athens.....	849	117	103	92	76	62	49
Atlanta.....	876	117	103	92	76	62	49

For many years prior to 1905 the all-rail rates to Spartanburg from New York, Philadelphia, and Baltimore were the same as those to Atlanta and Athens and were not exceeded at intermediate points via the lines of the Southern Railway and the Seaboard Air Line. On February 1, 1905, the rates to Atlanta from certain eastern seaboard points were reduced on the numbered classes, but no reduction was made on the lettered classes. In consequence, fourth section departures arose on the numbered classes and have continued in favor of Atlanta as against Spartanburg and other intermediate points.

In *Fourth Section Violations in the Southeast, supra*, we denied carriers' applications to charge rates from the east to Atlanta all rail or ocean and rail lower than to intermediate points. Because of the volume of tariff work necessary to comply with our order in that case, its effective date has been postponed until October 1, 1915. Defendants assert that under the new adjustment the Atlanta rates will be increased, but do not state in what amount, but make it clear that after our order is effective the rates all rail and ocean and rail from the east to Spartanburg and other intermediate points will not exceed the rates to Atlanta or Athens, and that the alleged discrimination against Spartanburg now existing will be removed. For this reason complainant concedes that this issue need not be considered further.

Blacksburg is an intermediate point between Charlotte and Spartanburg on the Southern, about 29 miles from Spartanburg. The ocean-and-rail rates from New York to Blacksburg are on a \$1.03 scale, while the all-rail rates are, as noted above, on a \$1.15 scale. The same all-rail rates apply to Gaffney, S. C., a point a few miles north of Spartanburg, but the ocean-and-rail rates to that point are on a \$1.07 scale.

It does not appear that any uniform basis is or has been used in constructing the all-rail rates from the east to Spartanburg, and points in the same zone, other than that they have been made with reference to the Atlanta rates as maxima. Certain explanation is made of the manner in which the Charlotte rates were first con-

structed, but defendants' witness could not give the reason for the rates at Blacksburg and Gaffney being lower than those to Spartanburg.

It appears that the rates from the Virginia cities to points in the southeast are constructed on a zone basis with respect to points of destination. The first zone with a 61-cent scale of rates extends from the Virginia cities to Winston-Salem, N. C., and east along the line of the Southern Railway through Greensboro and Goldsboro, N. C. The next zone, with a scale of 68 cents, extends from a point just south of Greensboro to and including Charlotte and along a line east thereof. The next zone extends south of the line just mentioned on a basis of 80 cents, and the rate scale jumps to 84 cents a short distance north of Spartanburg. This 84-cent scale is the maximum scale growing out of the observance of the fourth section by the Richmond & Danville Railroad in 1887, that being the Atlanta rate.

It will be noted that on the first six classes the all-rail rates from the east to Spartanburg exceed the rates to Charlotte by the following amounts, 23, 18, 19, 20, 14, 13; and on the other classes by corresponding amounts. The rates on the first six classes from the Virginia cities to Spartanburg exceed the rates from the same points to Charlotte by 16, 21, 16, 14, 10, 15.

In view of this fact complainant urges that Spartanburg be given all-rail rates from the east relatively the same as to Charlotte plus the same per ton-mile charge for the additional distance of 76 miles, as the difference in the service on traffic from the east is confined to south of the Virginia cities. On brief, however, complainant asserts that the all-rail rates to Spartanburg from the east should at least not exceed the all-rail rates to Charlotte by more than the rates to Spartanburg from the Virginia cities exceed the rates to Charlotte.

Defendants' principal witness admitted that the adjustment of rates to Spartanburg should follow the adjustment from the Virginia cities and stated that under the new rates to be made effective as a result of our order in *Fourth Section Violations in the Southeast, supra*, some different gradation from the east will probably be made south of Charlotte.

We are of the opinion, and find, that defendants' all-rail rates from the east are and for the future will be unjustly discriminatory against Spartanburg in so far as they exceed the all-rail rates to Charlotte by more than the rates to Spartanburg from the Virginia cities exceed the rates to Charlotte.

The all-rail rates from New York, Philadelphia, and Baltimore and other eastern points to Spartanburg, Charlotte, and other points in the southeast exceed the combinations on Norfolk. The following table shows the combinations on Norfolk on the first six classes from New

York to Spartanburg at time of filing this complaint, the joint through rates, and the amounts in which the combinations were lower than the joint through rates:

	1	2	3	4	5	6
New York to Norfolk.....	\$0. 32	\$0. 27	\$0. 23	\$0. 20	\$0. 15	\$0. 12
Norfolk to Spartanburg.....	. 84	. 79	. 64	. 52	. 43	. 40
Combination.....	1. 16	1. 06	. 87	. 72	. 58	. 52
Joint through all-rail rates New York to Spartanburg ..	1. 26	1. 08	. 95	. 81	. 66	. 54
Combination lower.....	. 10	. 02	. 08	. 09	. 08	. 02

As a result of the *Five Per Cent case, supra*, the local rates to Norfolk have been increased to 33.6, 28.4, 24.2, 21, 15.8, 12.6, so that the present combinations are lower than the joint through rates by the following amounts: 8.4, 0.6, 6.8, 8, 7.2, 1.4. This situation is protected by fourth section applications on file with us. That portion of Southern Railway Company's Fourth Section Application No. 1547, by which authority to continue joint through class rates from eastern port cities and interior eastern points to Spartanburg which exceed the combinations of rates on Norfolk, Va., is sought, was set down for hearing in connection with this complaint.

In justification of this adjustment defendants explain that the rail lines leading from the eastern seaboard and other eastern points to Norfolk and Richmond have been, and are, confronted with direct and highly efficient water competition between these points, and in order to participate in that traffic they have been compelled to meet the rates established by the steamship companies. These lines have never been, and are not now, willing to accept their local rates to Norfolk or Richmond as their divisions of joint through rates to points south. Whether or not the lines north of the Virginia cities receive as their divisions the differences between the combinations and the joint through rates, in addition to their local rates, does not clearly appear. It is stated, however, that the lines south of the Virginia cities have always been willing to recognize the combinations as maxima in making joint through rates and are now ready to do so if the eastern lines will accept their local rates in dividing the joint through rates, but that they do not feel justified in shrinking their revenues south of the Virginia cities when their connections demand more than their local rates as their divisions of the joint through rates. No witness appeared at the hearing for any of the lines north of the Virginia cities, except the Southern Railway, to justify these fourth section departures.

It appears that the all-rail rates from the eastern seaboard to south Atlantic ports are higher than the water-and-rail rates or the all-

water rates. It is stated that the lines south of the Virginia cities have never felt that they could fully meet that competition.

Our decision in *Gillis & Son v. P., B. & W. R. R. Co.*, 26 I. C. C., 61, is cited to show that the Commission has recognized water competition at Norfolk. In that case we said:

The rate to Norfolk is fixed and controlled by the competition of water carriers operating between Philadelphia and Norfolk, and it can not properly be made the measure of rates to intermediate points.

That decision permitted carriers to charge lower rates on sugar to Norfolk than to certain intermediate points. Since that time, in Fourth Section Order No. 4242, we granted carriers general relief to charge lower rates to Norfolk than to intermediate points on traffic from the east.

It is urged that while under the law carriers are required to recognize the aggregates of intermediate rates as maxima this is required only where the factors entering into such aggregates have been voluntarily established. There is no warrant in law for such a conclusion. If this construction were put upon this provision of the fourth section, rail lines would be allowed to charge through rates higher than the aggregates of the intermediate rates where one factor of the aggregates was depressed by competition with other rail carriers. If a carrier elects to meet competition at a point, the rate so made becomes the lawful factor in making up the aggregate of the intermediate rates. We have required rail lines having circuitous routes, or other disadvantages, to observe this principle in meeting rail competition, and we see no reason why the same rule should not apply to water competition that is met by the rail line. The application for relief will be denied.

RATES FROM THE WEST.

The joint rates from Cincinnati to Carolina territory are made in the following manner: The local rates from Chicago to Cincinnati are subtracted from the local rates from Chicago to the Virginia cities. The remainders on the first six classes, 32, 28, 22, 15, 12, 10, form a set of proportional rates from Cincinnati and Louisville applicable on business to the Carolinas. To these proportional rates are added the rates from the Virginia cities to Carolina points, and the sums of these two factors constitute the joint through rates from Cincinnati and Louisville. From Chicago and certain other points in central freight association territory there are proportional rates to the Virginia cities, applicable on shipments to the Carolinas, but from other points in this territory local rates to the Virginia cities are applicable, and these added to the proportional rates south of the Virginia cities make the through rates. Rates from this terri-

tory and from Ohio and Mississippi river crossings are also made through the Ohio River crossings, in combinations on Paint Rock, N. C., Augusta, and Atlanta.

For the purposes of this case Cincinnati may be taken as representative of the situation from the west. At the time of the filing of this complaint the following were the rates on the first six classes, and on flour and grain, which take classes C and D, respectively, from that point to Spartanburg and Charlotte:

From Cincinnati to—	1	2	3	4	5	6	Grain.	Flour.
Spartanburg.....	\$1.16	\$1.07	\$0.86	\$0.67	\$0.55	\$0.50	\$0.35	\$0.38
Charlotte.....	1.00	.86	.70	.53	.45	.35	.31	.34

As a result of our decision in *Rates to North Carolina Points, supra*, the rates to Charlotte were reduced on June 20, 1914, in the following amounts: On the first six classes 11, 8, 8, 6, 6, 4; on flour 6 cents; on grain 5 cents. These reductions were the result of a compromise between carriers operating in the state of North Carolina and their connections on the one hand and the Corporation Commission of North Carolina and authorities representing the shipping interests in that state on the other. The reductions made were in the local rates from the Virginia cities to North Carolina points, and these reduced rates were published as proportional rates applicable on business originating beyond the Virginia cities. We sanctioned these reductions and permitted carriers to depart from a strict adherence to the long-and-short-haul rule at certain points via their lines through Knoxville and Asheville.

Immediately following the establishment of the reduced rates in North Carolina, carriers took up with representatives of the communities in the Piedmont section, including Spartanburg, the matter of a reduction in rates to South Carolina points. Following this conference the carriers, on July 20, 1914, reduced the joint rates from Cincinnati and other Ohio River crossings and the local rates from Virginia cities to Spartanburg and other points in South Carolina in approximately the same amounts as the reductions made to points in North Carolina. The reductions to Spartanburg were 11, 13, 2, and 6 on classes 1, 2, 3, and 6, respectively, with corresponding reductions on the other classes, except that there was an increase of 1 cent each on classes 4 and 5. Reductions of 6 cents on grain, and of 8 cents on flour were also made. These rates are published as proportional rates from the Virginia cities to be used in making through rates from points in central freight association territory and other points, and are also used as factors in making joint through rates from

Cincinnati. The present through rates from central freight association territory to Spartanburg are lower than those in effect at the time of the filing of the complaint by the amounts of the reductions south of the Virginia cities, except that certain increases have been made in the local rates to the Virginia cities as a result of the *Five Per Cent case, supra*. The present joint rates on the first six classes and on flour and grain from Cincinnati to Spartanburg and Charlotte, which apply through the Virginia cities and through Knoxville and Asheville, are as follows:

	1	2	3	4	5	6	Flour.	Grain.
Spartanburg.....	\$1.05	\$0.94	\$0.84	\$0.68	\$0.56	\$0.44	\$0.30	\$0.29
Charlotte.....	.89	.78	.62	.47	.39	.31	.28	.26
Difference.....	.16	.16	.22	.21	.17	.13	.02	.03

These differences in the rates constitute the discrimination which Spartanburg complains of.

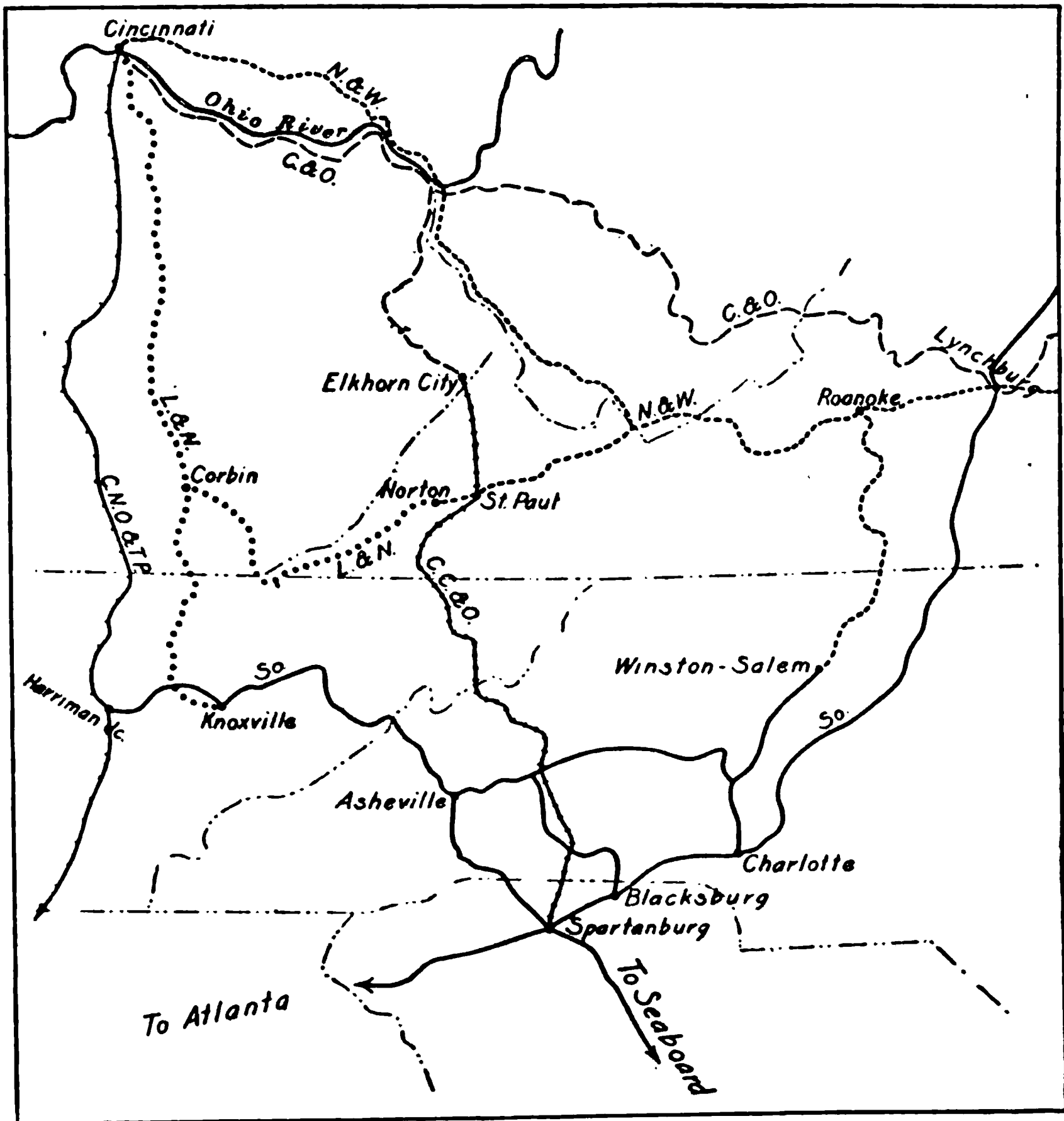
Complainant shows that the short-line distances from Cincinnati to Spartanburg and Charlotte are through Knoxville and Asheville and that the short-line distance from this point to Charlotte is through Spartanburg. It asserts that as Spartanburg is 76 miles nearer Cincinnati than is Charlotte it is entitled to rates no higher than those to Charlotte. The following map shows the principal routes from Cincinnati to Charlotte and Spartanburg via the Virginia cities and via Knoxville and Asheville.

The short-line distance via which any traffic moves from Cincinnati to Spartanburg is 490 miles, and that through Spartanburg to Charlotte is 566 miles. This is via the Louisville & Nashville to Knoxville, and the Southern Railway beyond. From Cincinnati via the Cincinnati, New Orleans & Texas Pacific Railway to Harri-man Junction, Tenn., and thence via the Southern Railway through Knoxville it is 508 miles to Spartanburg and 584 miles to Charlotte. To Norton, Va., via the Louisville & Nashville, thence to St. Paul, Va., via the Norfolk & Western, and to Spartanburg via the Carolina, Clinchfield & Ohio the distance is 562 miles, and to Charlotte it is 76 miles farther. From Cincinnati to Lynchburg via the Chesapeake & Ohio Railway and the Southern Railway beyond the distance to Charlotte is 678 miles and to Spartanburg 754 miles. From Cincinnati via the Norfolk & Western to Winston-Salem and the Southern Railway to Charlotte the distance is 660 miles and to Spartanburg it is 736 miles.

It appears that the Carolina, Clinchfield & Ohio is to be extended from its present terminus to Elkhorn City, Va., and is there to connect with the Chesapeake & Ohio. Via this route the distance from

Cincinnati to Spartanburg will be 557 miles. The present rates apply via the Carolina, Clinchfield & Ohio through St. Paul, Va.

The short-line distance to Charlotte is through Spartanburg, and although the short-line distance to Spartanburg is practically 250 miles less than the distance through the Virginia cities and 170 miles less than that to Charlotte through the Virginia cities, and 76 miles less than the short-line distance to Charlotte, Spartanburg takes



rates 16 cents higher first class than does Charlotte. The Spartanburg rate is extended to a wide zone east and south of that point.

Defendants assert that the rates to this territory are made through the Virginia cities and not via Knoxville and Asheville; that the competition as between Charlotte on the one hand and the Virginia cities on the other is materially greater than the competition between Spartanburg and the Virginia cities, due to the fact that Charlotte is nearer to the low-rate adjustment, and that for these reasons it is

not fair to measure the rates from the west to Charlotte and Spartanburg, respectively, via the short line through Asheville.

It is also argued that the line of the Southern through Asheville is operated at a disadvantage as compared with the lines through the Virginia cities, and that this was recognized by the Commission in *Rates to North Carolina Points, supra*. In our report in that case, we said:

The line through Asheville is operated through a mountainous and sparsely populated territory and is clearly at a disadvantage in making rates to the territory east of Salisbury.

We, however, made no finding that the line through Asheville was at a disadvantage in its operations to points south of Salisbury, N. C., or to points in South Carolina. If because of the sparsely settled territory it is at a disadvantage with its competitors operating through the Virginia cities, the difference in distance of 250 miles to Spartanburg offsets such disadvantage.

Regardless of how these rates are made, Spartanburg is entitled to the advantage of its location on the short lines from the west. We do not disregard the interests of lines that are competitive. We do not fix competitive rates with consideration only of the short line. The conditions here presented do not justify higher rates to Spartanburg than to Charlotte. We are of the opinion, and find, that the rates to Spartanburg from Ohio and Mississippi river crossings, and from points in central freight association territory, on traffic moving through Ohio River crossings and Asheville, are, and for the future will be, unjustly discriminatory against Spartanburg in favor of Charlotte in so far as the rates to Spartanburg exceed the rates contemporaneously maintained to Charlotte.

RATES FROM BUFFALO-PITTSBURGH TERRITORY.

From Pittsburgh and points in the Buffalo-Pittsburgh zone, joint through rates are published to Spartanburg and Carolina territory which are based upon the local rates to the Virginia cities plus the local rates beyond. At the hearing it was stated that certain reductions in these rates to Carolina territory would probably be made because of the reductions in rates from central freight association territory in June and July, 1914. These reductions were made on February 1, 1915. The following are the rates on the first six classes from Pittsburgh to Spartanburg prior to and since February 1, 1915:

	1	2	3	4	5	6
Prior to Feb. 1, 1915.....	130	118	97	75	62	55
Since Feb. 1, 1915.....	127½	113	97	75	62	50

Complainant has introduced no evidence other than that stated above with reference to other rates to show the unreasonableness of these rates, and we are of the opinion that the present rates to Spartanburg from Buffalo-Pittsburgh territory have not been shown to be unreasonable or unjustly discriminatory.

RATES FROM VIRGINIA CITIES.

At the time of filing this complaint the full local rates from the Virginia cities were used in making joint through or combination rates from Ohio River crossings, points in central freight association territory, and Buffalo-Pittsburgh territory, and it appears that complainant's attack on the rates south of the Virginia cities was principally to secure lower rates to be used as factors in making through rates from points in the above-named territories. As stated, defendants have reduced the rates from the Virginia cities to Spartanburg and published those rates as proportional rates to be used in constructing through rates from points in central freight association territory and from certain points west of the Mississippi River. Complainant appears to be satisfied with the present proportional rates south of the Virginia cities, and from the facts of record we do not find that those rates are unreasonable or unjustly discriminatory.

RATES FROM INTERIOR EASTERN POINTS.

It is alleged in the complaint that the all-rail rates from numerous interior eastern points to Spartanburg are the same as from eastern ports, while from other points the rates are differentials higher, and that from many of these points no joint through ocean-and-rail rates are published; that these rates are unreasonable and unjustly discriminatory, as compared with the rates to Knoxville, Chattanooga, Tenn., and Atlanta. Further, that the rates from Boston, both all rail and ocean and rail, to Atlanta, Chattanooga, and numerous other points in the southeast are the same as the rates from New York and Philadelphia, while the rates from Boston to Spartanburg are higher than from New York and Philadelphia. It is asserted that these rates are unreasonable and unjustly discriminatory. These allegations appear to have been abandoned at the hearing and on brief, and we have no foundation for a finding that these rates are unreasonable or unjustly discriminatory.

Orders will be entered in accordance with the conclusions announced herein.

No. 5327.

PULP & PAPER MANUFACTURERS TRAFFIC ASSOCIATION

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted May 15, 1915. Decided June 28, 1915.

Petition of the Duluth & Northern Minnesota Railway that it be released from the order in this case, denied.

F. J. Streyckmans for Pulp & Paper Manufacturers Traffic Association.

L. C. Harris and *J. G. Pearson* for Duluth & Northern Minnesota Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

CLARK, Commissioner:

In our original report in this case, 27 I. C. C., 83, we found that the defendants' carload rates on pulp wood from points in Minnesota to gateways and junctions of connecting carriers in that state, applicable on shipments destined to points in Wisconsin and Michigan, were unreasonable, and prescribed reasonable maximum rates for the future, effective August 1, 1913.

The Duluth & Northern Minnesota Railway Company, a Minnesota corporation, was a party defendant to the complaint. Its line extends from Knife River, Minn., on the north shore of Lake Superior, where it connects with the Duluth & Iron Range Railroad, in a northeasterly direction about 70 miles to a point near the boundary line between Lake and Cook counties, in the state of Minnesota. It did not file an answer to the complaint, enter an appearance at the hearing, or offer any testimony, but complied with our order by filing the proper tariffs, effective August 1, 1913.

In December, 1914, the Duluth & Northern Minnesota Railway, hereinafter termed petitioner, filed a bill in the United States district court for the northern district of Illinois, eastern division, seeking to enjoin the enforcement of our order, principally on the grounds that it was not subject to our jurisdiction because it operated wholly within the state of Minnesota, and that the rates prescribed in our

order were unreasonably low and confiscatory. On December 22, 1914, a preliminary injunction was granted, but the court required petitioner to file a bond for the repayment of all sums of money found to be due to any shippers paying rates above those prescribed in the Commission's order in the event that on final hearing it should not successfully establish the facts alleged in its petition.

On final hearing, February 26, 1915, the court dissolved the preliminary injunction and dismissed the bill. It found that petitioner was a common carrier subject to the act.

While the injunction was in effect petitioner charged the rates on pulp wood which we had found to be unreasonable.

On March 12, 1915, petitioner filed a petition for rehearing, alleging that we had erroneously decided that its rates on pulp wood were unjust and unreasonable, and that our order was, therefore, unjust and unwarranted; that if it is not reversed and modified petitioner will be called upon to pay numerous claims for reparation aggregating at least the sum of \$3,000 on account of the higher rates charged during the period between December 22, 1914, and February 26, 1915, and that it will sustain losses in revenue on account of shipments made since December, 1914, to the end of the present season. It prays that we suspend the enforcement of said order as of December 22, 1914, pending a hearing upon said petition, and after hearing reverse and modify said order in so far as it applies to petitioner.

On March 18, 1915, we reopened the case for the purpose of granting petitioner a rehearing upon the matters set forth in its petition and denied the prayer that our order be suspended as of December 22, 1914, pending rehearing.

The rehearing has been had and the issue now presented for determination is whether or not the rates prescribed in our order are unreasonably low as to petitioner. The following table shows, in cents per 100 pounds, the rates on pulp wood in effect on petitioner's line prior to and since August 1, 1913, the effective date of our order, and the percentages of reductions therein:

Miles.	Prior to Aug. 1, 1913.	Since Aug. 1, 1913.	Percent- age re- duction.	Miles.	Prior to Aug. 1, 1913.	Since Aug. 1, 1913.	Percent- age re- duction.
5.....	2.5	1.5	40	45.....	3.8	2.6	31.5
10.....	2.5	1.7	32	50.....	4.0	2.7	32.5
15.....	2.7	1.9	29.6	55.....	4.1	2.8	31.7
20.....	2.9	2.1	27.6	60.....	4.3	2.9	32.5
25.....	3.0	2.2	26.6	65.....	4.5	3.0	33.3
30.....	3.2	2.3	28.1	70.....	4.7	3.08	34.5
35.....	3.4	2.4	29.4				
40.....	3.6	2.5	30.5	Average.....	.....	.....	31.5

Petitioner was organized and constructed in 1898 by Alger, Smith & Company for the purpose of transporting timber products. This company at that time owned, and still owns, many acres of timberlands on the line of the right of way. The road was constructed from Knife River and originally was but 15 miles long. It has been extended each year so as to reach new timber tracts until its main line is now approximately 70 miles in length. It has several branches and spurs into different timber tracts and its total operated mileage is about 120 miles.

Petitioner's capital stock is \$200,000, held by Alger, Smith & Company or by stockholders of that company. There are no bonds, and the only outstanding indebtedness is evidenced by a book account of approximately \$1,375,000 owed to Alger, Smith & Company. This indebtedness is for money advanced from time to time as needed to extend the road, and it is asserted that all of such money has been put into the road for extension purposes. Interest at the rate of 5 per cent has been paid to Alger, Smith & Company each year on this book account, but only three dividends, each of 10 per cent, have been paid on the capital stock, in the years 1901, 1902, and 1905. Alger, Smith & Company are the principal shippers over petitioner's line. Their tonnage constitutes more than 50 per cent of the entire tonnage of the road. One of petitioner's witnesses admitted that the road was built for the purpose of taking out forest products for parties who were interested in it and not for the purpose of affording transportation facilities to others.

Petitioner operates through an undeveloped and sparsely settled country not reached by any other railroad. No manufacturers are located along its line, and the population in the territory served by it is very small. It handles passengers, mail, and express, but its principal revenue is derived from forest products, which constitute more than 95 per cent of its tonnage. The passenger traffic is only incidental and is principally handled on mixed trains. There is practically no inbound tonnage except a few camp outfits, and its empty car mileage is approximately 99 per cent of its loaded car mileage. The greater volume of its traffic moves between December 1 and April 15.

Pulp wood constitutes only about 10 per cent of petitioner's traffic, the remainder being divided as follows: 77 per cent saw logs, 6 per cent crossties, 4 per cent poles, posts, piling, and stove wood, and the remainder miscellaneous articles. These figures are for the year ended June 30, 1914, and there is nothing in the record to show that they are not representative of other years. It will thus be seen that our order effected an average reduction of 31.5 per cent in the rates on only 10 per cent of petitioner's traffic.

A valuation of its road, made by petitioner in November, 1914, shows the cost of reproduction to be \$2,023,113, and the cost of reproduction less depreciation, or the present value, \$1,741,900. It is asserted that the life of the road is limited by the supply of forest products in that locality and that when this supply is exhausted, within 12 or 15 years, the road will be of little value except for scrap.

In support of its contention that the rates prescribed by us were unreasonably low petitioner offers many exhibits showing its financial condition, cost of handling pulp wood, and certain comparisons of rates. The exhibits as to its financial condition are compiled from its annual reports to the Commission and are for the years ended June 30, 1911, 1912, 1913, and 1914. From these it appears that petitioner has enjoyed a net corporate income over and above expenses for 1911, 1912, and 1913, but experienced a deficit for 1914. As no reason for this deficit appears in the record other than the inference that it was caused by our reduction of the pulp-wood rates, it will be necessary to examine the reports for these years in somewhat more detail as to the causes for this alleged deficit in 1914. The following statement has been compiled from petitioner's annual reports to the Commission and the year 1910 has been added to those included in petitioner's exhibits.

Item.	1914	1913	1912	1911	1910
Miles of line owned, June 30.....	120.32	115.30	109.00	110.40	88.45
Average mileage operated during year.....	120.32	115.30	109.00	110.40	88.45
BALANCE SHEET.					
Net road and equipment.....	\$1,879,092.59	\$1,820,446.75	\$1,692,825.88	\$1,600,891.88	\$1,471,087.09
Cash.....	304,989.66	351,956.19	316,872.90	311,835.38	286,509.12
Grand total.....	2,184,082.25	2,172,402.94	2,009,698.78	1,912,727.26	1,757,596.21
Capital stock.....	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00
Audited vouchers and wages unpaid.....	1,679,092.59	1,620,446.75	1,492,825.88	1,400,891.88	1,271,087.09
Profit and loss credit balance.....	304,989.66	351,956.19	316,872.90	311,835.38	286,509.12
INCOME STATEMENT.					
Rail operations:					
Revenues.....	357,361.63	382,290.05	369,720.20	378,176.20	387,994.94
Expenses.....	285,388.94	272,596.62	266,537.86	285,949.58	262,790.77
Net revenue, rail operations.....	71,972.69	109,693.43	103,182.34	92,226.62	125,204.17
Railway tax accruals.....	17,958.94	18,594.69	15,653.88	15,808.25	26,595.42
Railway operating income.....	54,013.75	91,098.74	87,528.46	76,418.37	98,608.75
Joint facility rent income.....		5,409.75	3,059.50		
Gross income.....	54,013.75	96,508.49	90,587.96	76,418.37	98,608.75
Hire of equipment, debit balance.....	2,572.80	2,474.59	2,524.46	3,120.30	2,489.10
Interest deductions.....	64,567.78	58,950.61	155,729.43	47,971.81	42,442.56
Net income.....	* 13,126.83	35,083.29	32,334.07	25,326.26	53,677.09
Balance transferred to credit of profit and loss.....	* 13,126.83	35,083.29	32,334.07	25,326.26	53,677.09

* Excludes \$27,296.56, representing interest accrued from Jan. 1 to June 30, 1911. See footnote 3.

* Deficit.

Item.	1914	1913	1912	1911	1910
PROFIT AND LOSS STATEMENT.					
Credit balance at beginning of fiscal period.....	\$351,956.19	\$316,872.90	\$311,835.38	\$286,509.12	\$232,832.03
Credit balance transferred from income account.....	¹ 13,126.83	35,083.29	32,334.07	25,326.26	53,677.09
Miscellaneous debits.....	² 33,839.70	.....	³ 27,296.55	.....	.....
Credit balance at end of fiscal period carried to general balance sheet.....	304,989.66	351,956.19	316,872.90	311,835.38	286,509.12
OPERATING EXPENSES.					
Maintenance of way and structures.....	98,154.62	94,195.35	98,352.22	90,367.46	79,201.04
Maintenance of equipment.....	68,841.62	49,632.65	37,121.91	59,246.99	58,173.87
Traffic expenses.....	2,900.00	.....	.....	.....	.....
Transportation expenses.....	91,228.67	105,937.27	108,253.10	106,334.25	102,836.55
General expenses.....	24,264.03	22,831.35	22,810.63	30,000.68	22,579.31
Total operating expenses ..	285,388.94	272,596.62	266,537.86	285,949.38	262,790.77
Per cent of total freight tonnage:					
Lumber.....	.10	.10	.06	.04	.04
Other products of forests.....	99.05	99.14	99.04	98.96	98.95
Tons carried, revenue.....	608,266	752,290	858,705	856,375	879,076
Tons carried 1 mile.....	86,787,927	40,983,759	43,223,796	39,821,437	35,163,040
Total freight revenue.....	\$269,071.49	\$276,306.26	\$295,734.12	\$284,046.85	\$293,992.25
Freight revenue per mile of road.....	2,236.29	2,396.41	2,713.15	2,572.89	3,323.82
Operating revenues per mile of road.....	2,970.09	3,315.61	3,391.93	3,425.51	4 386.60
Operating expenses per mile of road.....	2,371.92	2,364.23	2,445.30	2,590.12	2,971.07

¹ Deficit.

² Includes adjustment of "stores inventory" accounts for years 1909, \$10,187.49; 1910, \$12,105.36; and 1911, \$12,049.12.

³ Represents interest accrued from Jan. 1 to June 30, 1911.

It will be noted that petitioner had a net income of \$53,677.09, \$25,326.26, \$32,334.07, and \$35,083.29 for 1910, 1911, 1912, and 1913, respectively, and a deficit of \$13,126.83 for 1914. However, in 1912 the interest account shows an additional item of \$27,296.55, representing accrued interest from January 1 to June 30, 1911. In petitioner's exhibits this amount has been charged off in 1912, showing the net income for that year to be \$5,037.52.

It appears that the net income has been turned back into the road each year and carried forward in petitioner's accounts as cash. Just why petitioner has carried this item on the debit side of its accounts as cash and offset it by a similar item styled profit and loss credit balance is not clear, as the record shows that the net income has been used each year for extensions.

It will also be noted that the interest item increased from \$58,950.61 in 1913 to \$64,567.78 in 1914, a net increase of \$5,617.17. The road and equipment account for this year increased only \$58,645.84, and if this correctly represents the additional amount of money put into the road during the year ended June 30, 1914, \$35,083.29 of this should be the net income from the year ended June 30, 1913, leaving \$23,562.55 to be advanced by Alger, Smith & Company. The interest on this amount at 5 per cent would be \$1,178.13, yet the increase in

interest for that year appears, as stated above, to be \$5,617.17. Assuming that Alger, Smith & Company did advance \$58,645.84 in that year, as is probably evidenced by the increase in the audited vouchers and wages unpaid item from \$1,620,446.75 in 1913 to \$1,679,092.59, a net increase of \$58,645.84, the interest at 5 per cent would be only \$2,932.29, and the difference is not accounted for. If this be true, then no explanation is made of what has become of the \$35,083.29 net income earned in 1913.

At the hearing it developed that petitioner was carrying in the profit and loss credit balance the item audited vouchers and wages unpaid. In other words, in 1914 the audited vouchers and wages unpaid item of \$1,679,092.52 includes the \$304,989.66 carried as cash on the debit side and as profit and loss on the credit side, which appears, as above stated, to have been turned back into the road. So that during these years the audited vouchers and wages unpaid account has been incorrectly made up. During the year 1914 it would properly be represented by the difference between \$1,679,092.59 and \$304,989.66, or \$1,374,102.93, which is approximately the amount shown by the record to be due Alger, Smith & Company.

It will be noted that the operating revenues decreased from \$382,290.05 in 1913 to \$357,361.63 in 1914, while the operating expenses increased from \$272,596.62 to \$285,388.94. During the same period the tonnage decreased from 752,290 tons to 608,266 tons. This is a decrease in tonnage of 19 per cent and a decrease in operating revenue of 6.5 per cent. The freight revenue during the same period decreased only 2.6 per cent.

In examining the operating expenses to determine the cause of this increase of \$12,792.32 in 1914 we find that the maintenance of equipment account increased \$19,208.97 over the previous year. Part of this is due to the charging of \$9,794.06 to depreciation in 1914, no such charge having been made in previous years. There are also increases of \$4,462.10 and \$3,398.01, respectively, in the maintenance of roadway and track and the locomotive repairs accounts, while the car repairs account shows an increase of \$9,270.10. An item of \$2,900 for traffic expenses appears in 1914, no such charge having been made in the other years. Although the maintenance of equipment and maintenance of way and structures accounts in 1914 increased \$23,168.24, the transportation expense account decreased \$14,708.60. The general expense account increased only \$1,432.68. The net increase in total operating expenses for 1914 is \$12,792.32. Of this amount, however, the items of \$9,794.06 for depreciation and of \$2,900 for traffic expenses, a total of \$12,694.06, have never been charged before, and these two items approximately offset the alleged deficit of \$13,126.83 in 1914.

The following statement compiled from the annual reports on file with us shows petitioner's operating revenues for the years 1913 and 1914 in detail:

	1914	1913	Increase 1914 over 1913.
I. Revenue from transportation:			
Freight revenue.....	\$269,071.49	\$276,306.26	¹ \$7,234.77
Passenger revenue.....	33,620.65	37,785.71	¹ 4,165.06
Mall revenue.....	2,715.58	1,179.58	1,536.00
Express revenue.....	280.26	227.34	52.92
Total passenger service train revenue (accounts Nos. 2 to 8).....	36,616.49	39,192.63	¹ 2,576.14
Switching revenue.....	49,289.10	65,605.68	¹ 16,316.58
Total revenue from transportation (accounts Nos. 1 to 11).	354,977.08	381,104.57	¹ 26,127.49
II. Revenue from operations other than transportation:			
Station and train privileges.....	300.00	300.00	.....
Car service.....	144.00	257.00	¹ 113.00
Miscellaneous.....	1,940.55	628.48	1,312.07
Total revenue from operations other than transportation.	2,384.55	1,185.48	1,199.07
Total operating revenues.....	357,361.63	382,290.05	¹ 24,928.42

¹ Decrease.

It will be noted that petitioner's freight revenue in 1914 decreased only \$7,234.77, while its passenger and switching revenue fell off \$4,165.06 and \$16,316.58, respectively. This decrease in freight and switching revenue is probably caused by the 19 per cent decrease in tonnage. Certainly the reduction in pulp-wood rates has not in any way influenced the passenger revenue reduction, and as no switching rates were involved in our order we do not see how that order could have had any bearing on the \$16,316.58 decrease in switching revenue. If these two items had remained the same in 1914 as in 1913, and taking into consideration the fact that items of depreciation and traffic expenses, referred to above, have never been charged before, petitioner would have had a net corporate surplus in 1914.

In view of these facts we are of the opinion that the year ended June 30, 1914, was not fairly representative of petitioner's operations and that the financial results in that year can not properly be considered as conclusive. If we take the year ended June 30, 1913, as representative, it appears that petitioner earned \$35,083.29 over and above expenses and interest. If a 10 per cent dividend of \$20,000 had been declared on its capital stock, it would still have had left a net corporate surplus of \$15,083.29. Its net income in that year, exclusive of interest and including taxes, was \$94,033.90, or a return of 5.16 per cent on \$1,820,446.75, the book cost of the road, which represents the capital stock, cumulated profit and loss, and money borrowed from Alger, Smith & Company.

Petitioner offers as exhibits certain reports made to the Railroad and Warehouse Commission of the state of Minnesota to show that its revenue per ton-mile is lower than that of other logging roads in that territory. The roads selected are not branches of any railroad system, and 75 per cent or more of their earnings come from forest products. We have examined other figures in these exhibits, and show in the table below, for the year ended June 30, 1913, the average revenue per train-mile, the percentage of operating expenses to earnings and the density of traffic, i. e., the number of tons carried one mile per mile of road:

	Revenue per ton-mile.	Revenue per train-mile.	Percentage of operating expenses to earnings.	Tons carried 1 mile per mile of road.
	<i>Cents.</i>		<i>Per cent.</i>	
Duluth & Northern Minnesota.....	0.67	\$1.88	71.3	355,453
Duluth & Northeastern.....	1.0	2.19	78.6	253,630
Minneapolis & Rainy River.....	2.0	2.40	94.3	4,642
Minneapolis, Red Lake & Manitoba.....	3.0	2.04	83.3	41,563
Minnesota, Dakota & Western.....	2.4	5.26	108.74	34,076
Mississippi, Hill City & Western.....	2.6	1.27	103.50	30,875

It will be noted that while petitioner's revenue per ton-mile is lower than that of the roads selected by it as representative, its percentage of operating expenses to earnings and the density of traffic on its line are much more favorable than those of the others.

Other exhibits purport to show that the earnings per ton-mile on petitioner's road are lower than on any but seven of the class II roads making reports to the Interstate Commerce Commission. The per ton-mile earnings, while of value in certain instances, are in no sense conclusive in determining whether or not rates on a certain commodity on a road are unreasonably low. Particularly is this true where the density of traffic is much larger on one road than on another.

In our original report we refrained from making an order against the Mississippi, Hill City & Western Railroad Company because of its financial condition. A careful study of the financial condition of that carrier, as evidenced by its reports on file with us, shows that it can not properly be used as a basis for comparison in determining whether or not petitioner's rates on pulp wood are too low.

During the year ended June 30, 1914, petitioner handled only 150 cars of pulp wood on interstate rates, and certain figures are introduced to show that they were hauled at a loss. They originated on the Greenwood Lake branch of petitioner's line about 12 miles from North Branch Junction, a point on the main line about 32 miles from Knife River.

Shipments originating on this branch are switched to North Branch Junction, from which point logs, ties, and other forest products are moved to Knife River in freight trains. These cars of pulp wood, averaging three cars per day during the shipping season, were moved on mixed trains, being attached to the regular passenger train which runs between Knife River and the terminus of the main line. Petitioner asserts that this practice is followed because there are not enough cars of pulp wood to warrant trainloads.

In arriving at the cost of handling these cars petitioner has made an allocation of the different expenses to passenger and freight service on this traffic between North Branch Junction and Knife River. Between the points of origin and North Branch Junction there is no passenger service, and expenses for hauling these 150 cars have been divided in proportion to all the other cars handled on this branch during the same period, making a cost for this service of \$508.15. The total revenue received for the movement from point of origin to Knife River was \$2,319.14, and the expenses assigned to pulp wood are \$2,859.56, a loss of \$540.42, or \$3.60 per car.

The method of arriving at this cost is as follows: Maintenance of way and structure expenses are divided between freight and passenger service on the basis of total locomotive and car miles, mixed train locomotive miles being considered one-half passenger miles. This assigns 96.98 per cent to freight service. Of the freight proportion, 0.55 per cent, or \$523.55, is assigned to "interstate pulp wood" on the basis of net ton-miles. By a similar process the traffic and a portion of the maintenance of equipment expenses are assigned to "interstate pulp wood." The transportation expenses are apportioned by an entirely different process. This apportionment is made by a special study of the mixed train service upon which this traffic moves. The expenses of these trains are apportioned between pulp-wood and passenger service on the basis of gross ton-miles, and \$1,857.30 is charged to the pulp wood as transportation expense. The result in summary form is as follows:

Operating expenses charged to "interstate pulp wood."

Maintenance of way and structures.....	\$523. 55
Maintenance of equipment, excluding locomotive repairs..	220. 26
Traffic and general.....	142. 49
Transportation.....	1, 857. 30
Total.....	2, 743. 60
Taxes	115. 96
Total expenses.....	2, 859. 56

The \$1,857.30, transportation expenses, is approximately 68 per cent of the total operating expenses, less taxes, assigned to pulp

wood. This may be compared with the showing for this road for 1914, in which the total transportation expense is 35 per cent of the total operating expense, less locomotive repairs. The comparison shows such a difference that we are convinced that the transportation costs assigned to this pulp-wood movement are abnormal.

The mixed train on which these cars move is made up of one combination baggage and passenger car, one passenger car, and an average of three cars of pulp wood, or five revenue-earning cars, from North Branch Junction to Knife River. The average number of loaded freight cars per train on petitioner's line for this same period was 9.51, including the mixed trains. On the freight trains the number of cars would be larger. It follows, therefore, that the apparent average cost of handling these cars on mixed trains will necessarily be much higher than if they were hauled on freight trains, because of the smaller number of cars over which to distribute the engine expenses and wages. No satisfactory reason appears why petitioner should handle pulp wood on passenger trains in preference to freight trains, if such handling is more expensive. It is asserted that it is because the growth of pulp wood is very scattering and that it is impossible to make up a trainload from any one point. It appears, however, that logs, ties, and other forest products from this branch do not move in trainloads, but are switched to North Branch Junction to await freight trains, and in certain instances pulp wood has been handled in this manner. It is clear, therefore, that it would not be impracticable to haul pulp wood in freight trains with other forest products from North Branch Junction.

Petitioner operates a small number of passenger trains. In 1914 its report shows 104,059 freight locomotive miles, 89,930 mixed train locomotive miles, and 528 passenger locomotive miles. In view of the relative unimportance of its passenger business we may approximate the average loaded car-mile cost on all freight business. Its operating ratio of 79.86 per cent for all business for this year multiplied by its passenger service train revenue of \$36,616.49 gives \$29,241.93, which may be taken to represent roughly the passenger service operating expenses. *Lum v. G. N. Ry. Co.*, 33 I. C. C., 541. If this sum is subtracted from the total operating expenses of \$285,388.94, the balance, \$256,147.01, may be taken to represent approximately the freight expense for the year. The loaded freight car-miles for the same period were 1,353,185, which gives an operating expense per loaded car-mile of 18.92 cents. For 32 miles the cost would be \$6.05 per car, or a total cost of \$908.16 for hauling the 150 cars from North Branch Junction to Knife River. If to this we add \$508.15, the estimated cost of switching the cars to North Branch Junction, we have a total cost for the entire movement of \$1,416.31. Adding taxes, \$115.96, and deducting the sum, \$1,532.27, from the

total revenue received, \$2,319.14, there remains an income of \$786.87, or approximately \$5.25 per car, instead of a loss of \$3.60 per car as stated by petitioner.

It appears that during the winter months shipments of pulp wood from points on petitioner's line destined to points on the great lakes are hauled to the docks at Knife River, there unloaded, and held until the opening of navigation in the spring. On such shipments petitioner has assessed the intrastate rates, which are higher than those prescribed by us, although it was known to petitioner when these shipments left the points of origin that they were destined to interstate points beyond Knife River. Petitioner seems to be in doubt as to whether or not the interstate rates should have been assessed, but justifies its action by asserting that this traffic was billed only to Knife River. Petitioner appears to fear the presentation of reparation claims because of its having assessed the intrastate rates. We entertain no doubt that such shipments are interstate and subject to the interstate rates.

Whatever interest petitioner may have in the future maintenance of its present rates on pulp wood, it clearly appears from the record and from the petition that its principal interest in this rehearing is to have us find that the rates prescribed in our order are unreasonably low, so as to enable it to use such finding as a shield when certain reparation claims which it alleges are now outstanding are presented.

Petitioner urges that we should take into consideration the fact that the life of its road will be only 12 or 15 years more, and recognize that its earnings should be sufficient to not only pay a return upon the investment itself but to amortize this investment during the time that it is productive and provide for its natural depreciation at the end of its life. While perhaps the question of amortization might properly be taken into consideration in originally prescribing rates for the future, in view of the fact that apparently petitioner has never applied any of its earnings to such a fund, we are not ready to find on this record, which involves only rates on a small part of petitioner's traffic, that its rates should be high enough to provide such a fund. Certainly if such a plan is to be followed it can not be applied alone to rates on pulp wood, which are higher than the rates upon the greater volume of the traffic transported by petitioner.

The movement of pulp wood via petitioner's line is practically over for this season. Our order will expire on August 1, 1915. We can not undertake to say that in the past petitioner's rates have been too low, and thus, in effect, attempt to legalize charges that have been found to be unlawful.

It follows that the petition for modification of our order must be denied, and such an order will be entered.

No. 6130.

LOUISIANA STATE RICE MILLING COMPANY

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL

Submitted January 17, 1914. Decided June 29, 1915.

Defendants' so-called "shipper's load and count" provision, indorsed on bills of lading covering shipments loaded by the shipper and not checked by the carrier, not shown to be unreasonable or otherwise unlawful. Complaint dismissed.

Frank Lyon for complainant.

Fred H. Wood for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant, a corporation with headquarters at Crowley, La., engaged in the purchase and manufacture or milling of rice, owns and operates a number of mills at different points in the state of Louisiana, which are located on tracks of the industry varying in distance from 200 feet to a mile and a half from the defendant carriers' freight receiving stations. By its petition it alleges that the practice of the defendants provided for under the following rule, published as No. 23 in western classification No. 51, is unlawful and unreasonable:

Freight loaded by shipper and not checked by carrier must be receipted for "shipper's load and count."

The first and principal contention made by complainant is that a bill of lading with this provision indorsed thereon is not such a receipt as shippers are entitled to and carriers required to furnish under the following provision of section 20 of the commerce act, known as the "Carmack amendment":

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

In answer to this contention the defendants state that in each of the cities or towns where complainant's mills are located they have provided public facilities, consisting of freight depots and team tracks, at which they maintain the necessary force of employees to check shipments as loaded, issue for the freight there received and checked bills of lading without notation thereon of the statement "shipper's load and count," and assume lawful responsibility therefor. They assert that not being required to establish or operate industry tracks, which are constructed primarily in the interest and for the convenience of the owning industry, prompted by various considerations such as the cost of land, availability of sources of supply, including raw material, saving in cartage, etc., carriers are within their lawful rights in attaching reasonable conditions or qualifications to receipts issued for shipments which are loaded by a shipper at the industry. In support of this contention they refer to our decision in the case of *Imperial Wheel Co. v. St. L., I. M. & S. Ry. Co.*, 20 I. C. C., 56, decided December 5, 1910, claiming that the question here involved is in principle and substance the same. In that case, wherein was attacked the carrier's refusal to make a connection with or operate over petitioner's spur track leading to its industry, except upon condition that the carrier should be released from liability for loss and damage to the premises by fire which might be caused by sparks from its locomotives, the Commission held that where a carrier goes beyond its common-law duty in operating a spur track for the convenience of the shipper it may attach reasonable conditions to the undertaking.

The prime if not the only purpose of the Carmack amendment was to make the initial carrier receiving property for interstate transportation liable to the lawful holder of a receipt or bill of lading issued therefor on account of any loss, damage, or injury to such property caused by it or by any other common carrier over whose lines the same might pass. Prior to that time the shipper or consignee was put to the trouble and expense of attempting to locate among those composing the through line of movement the particular carrier responsible for any loss or damage occurring to the shipment and of endeavoring to collect from it. It was generally difficult and often impossible to definitely ascertain the particular carrier in the through line which had caused the loss or damage, and it was the inadequate opportunity afforded under these conditions for enforcing justice that led to the enactment of this amendment of the law. It did not undertake directly to prescribe or limit the conditions or provisions of bills of lading, but operated to render void to the extent stated any attempted limitation of the liability of the initial carrier to the shipper.

The practice, the legality of which is here in question, had been followed generally by carriers long before the passage of the Car-

mack amendment and was a matter of common knowledge at that time. In the absence of anything therein contained specifically condemning this practice, or declaring unlawful a receipt or bill of lading containing the so-called "shipper's load and count" provision, it can not be held that that act overturned it.

Since this case was submitted there has been enacted the so-called Cummins amendment to the provision of section 20 of the act hereinbefore quoted, which has the effect of invalidating all limitations of carriers' liability for loss, damage, or injury to property transported caused by the initial carrier or by another carrier to which it may be delivered or which may participate in the transportation. We do not think, however, that the "shipper's load and count" provision here in question is such a limitation upon carriers' liability as is contemplated by the prohibitions of this amendment. It does not appear that this rule operates to limit the liability of the carrier for the full value of the property shipped but, in its application to a claim for loss because of alleged failure to deliver the whole amount transported, has the effect of placing the burden upon the shipper who loads on his private sidetrack to prove that the amount specified was loaded and that a less amount was taken out of the car by the consignee; whereas in the case of a receipt not so qualified the burden is upon the carrier to prove that the amount specified in the bill of lading was either not in fact loaded, or was delivered, or otherwise to settle for the full value thereof.

Coming now to the secondary allegation, that of unreasonableness, raised by complainant. We are asked to require of defendants that upon notice they send a representative to complainant's mills and check the loading of their shipments, or, if this be found impracticable because of lack of sufficient clerical force, to accept their statement as to quantities, etc., without checking by the carrier, and issue so-called "clean" bills of lading therefor. To comply with complainant's demand, defendants state, would either require them to accept the shipper's statement of the quantity loaded without verification, or to send a representative to complainant's mills upon demand to check the loading of each car, which they say they do not do with respect to any carload freight loaded upon industry tracks connected with their lines, whether the commodity be rice or something else. Defendants' witness testified that there are 233 industries situated on private tracks adjacent to their lines in the state of Louisiana alone and estimated that in order for them to be prepared to send a man to check all carload freight as loaded at these industries would necessitate the employment of not less than 150 additional men at \$75 each per month, or an annual expenditure of \$135,000. Whether or not as much as alleged by defendants, there can be no

question that the abolition of this rule or practice would result in substantially increased expense to carriers. It is also manifest that any rule which might here be laid down could not be confined in its application to the shipments made by any particular industry, section, or roads, but must admit of general application.

The defendants assert that the basis for this proceeding lies in the declination of claims in connection with shipments where the car was sealed by the complainant at its mill prior to delivery to the carrier, and the carrier's record shows that the car went through to final destination with seals unbroken and without other evidence of damage or spoliation. It is stated that the number and amount of such claims, while not shown, is insignificant as compared with the total number of shipments which are handled subject to shipper's load and count. It is further stated by them that, even should they be required to go to the heavily increased expense of checking shipments made under the conditions herein outlined, they would be no more justified in paying claims of the character above described in connection with shipments moving on so-called "clean" bills of lading than on shipments made under the existing shipper's load and count rule and practice. Counsel for the defendants made the assertion, which was not disputed, that every claim filed by the complainant or any other shipper, even though in connection with a shipment made subject to shipper's load and count, is as carefully investigated as if an unqualified receipt had been issued and that payment is declined only when such investigation shows delivery with shipper's seals intact. On the other hand, it is urged that even if the contents of a car had been checked or counted by an agent of the carrier in the presence of the shipper's representative, and it can be clearly established that the car was delivered to the consignee at destination with the seals intact, they would be justified in refusing claims for shortage based upon statements of the consignee, otherwise unsupported, that there was such a shortage.

The question of the reasonableness of the practice here involved has on two occasions been before us in formal proceedings. In the case of *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.*, 19 I. C. C., 513, 521, wherein, among other things, the complainant attacked as unreasonable the attitude of the defendant carrier in refusing to issue bills of lading covering the fruit and vegetable traffic there involved, without inserting thereon the qualifying notation "shipper's load and count," the shipments being loaded by the shipper and contents not checked by the carrier, the Commission said, with respect to the facts and circumstances of record in that case:

Perishable articles, such as complainant ships, must be handled by the carrier with all possible dispatch in order to be properly marketed. To require

the carrier in a traffic of this description to count the packages tendered for transportation would in many instances retard the shipment and impose an additional burden upon already overburdened station agents without resulting in a compensating advantage to the shipper. Where the shipments are in straight or mixed carloads, which constitute a large majority of complainant's shipments, the cars are sealed at point of origin, and should go to destination with seals unbroken. Upon the record the Commission can not say this practice is unreasonable or that it results in defeating the published rates.

While this practice was general among carriers at that time, it was not then, as now, provided for in the form of a rule incorporated into their classifications. In passing upon this rule in the form of a tariff provision in connection with the suspension and investigation of *Western Classification No. 51*, 25 I. C. C., 442, 491, decided December 9, 1912, we pointed out that the receipt in a bill of lading is not conclusive, even though unqualified, and that a carrier is not estopped from showing that the amount or quantity stated was never in fact delivered to it for transportation. We at that time withheld expressing any final view with regard to this rule inasmuch as the subject was involved in proposed legislation then pending before the Congress, but permitted the same to go into effect.

As hereinbefore stated, the subsequently enacted Cummins amendment has not changed the legal status of the rule in question; and where the practice is shown to have resulted from a situation involving the mutual interest and convenience of the shipper and the carrier we do not, in view of all the facts, circumstances, and conditions appearing of record, find the rule and practice challenged to be unreasonable or otherwise in violation of existing law. It should be borne in mind that the shipper is not denied his right to an unqualified receipt in any case in which delivery is tendered to the carrier at any of its public stations where it provides facilities for the receipt and delivery of freight.

The complaint must be dismissed.

34 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 545.
TRAP OR FERRY CAR SERVICE CHARGES.

Submitted April 19, 1915. Decided July 3, 1915.

Proposed charges for trap or ferry car service in trunk line, central freight association, western trunk line, trans-Missouri, and southwestern territories, and Chicago, Ill., found not justified. Schedules naming the proposed charges required to be canceled.

George Stuart Patterson for trunk line carriers.

William Ainsworth Parker and *William A. Eggers* for Baltimore & Ohio Railroad Company.

Edward Barton and *William A. Eggers* for Baltimore & Ohio Southwestern Railroad Company.

T. H. Burgess for Erie Railroad Company.

L. C. Stanley for Grand Trunk Railway system.

Frank B. Carpenter for New York, Chicago & St. Louis Railroad Company.

Morrison R. Waite for Cincinnati, Hamilton & Dayton Railway Company.

O. E. Butterfield and *E. S. Ballard* for New York Central lines.

Charles Donnelly for Northern Pacific Railway Company.

A. P. Burgwin and *William A. Collin* for Pennsylvania lines.

E. C. Lindley for Great Northern Railway Company.

Henry G. Herbel and *Fred G. Wright* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

T. M. Pierce for Terminal Railroad Association of St. Louis.

Thomas Bond for St. Louis & San Francisco Railroad Company.

S. H. West and *E. A. Haid* for St. Louis Southwestern Railway Company.

N. S. Brown for Wabash Railroad Company.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

William D. McHugh for Chicago, Ill., carriers.

D. P. Connell for New York Central lines west.

Cassoday, Butler, Lamb & Foster, Walter L. Fisher, and *H. C. Barlow* for Chicago Association of Commerce.

John S. Burchmore and *Luther M. Walter* for National Industrial Traffic League.

Cassoday, Butler, Lamb & Foster for Central Manufacturing District and Midland Warehouse & Transfer Company.

Richmond D. Moot for General Electric Company.

O'Brian, Hamlin, Donovan & Goodyear for Buffalo Chamber of Commerce, *Larkin & Company*, and other Buffalo shippers.

George Gray and *A. C. Gray* for Wilmington Chamber of Commerce.

Colin C. H. Fyffe and *Paul N. Dale* for Illinois Manufacturers Association.

R. D. Sangster for Department of Traffic of the Commercial Club of Kansas City, Mo.

H. C. Krake for St. Joseph, Mo., Commerce Club.

Ewing Cain for Hershey Chocolate Company.

H. G. Wilson for Toledo, Ohio, Traffic Bureau.

Charles S. Williams for Cleveland, Ohio, Chamber of Commerce.

P. M. Seymour for Republic Stamping & Enameling Company and Canton, Ohio, Chamber of Commerce.

G. M. Freer for Cincinnati Chamber of Commerce.

B. F. McLean for Ohio Insulator Company and Ohio Brass Company.

P. E. Parker for Portage Rubber Company.

Frank C. Gorton for Standard Welding Company.

L. E. Merrill for Pittsburgh Valve & Fittings Company.

F. J. Tuhey for Arco Company.

Frank S. Swaney for Massillon Rolling Mill Company.

Phillip J. Gibbons for Kirk Lattey Manufacturing Company.

Anson J. Mitchell for National Carbon Company.

A. J. Henderson for White Automobile Company.

M. B. Schoeneweg for Upson Nut Company.

John Hart for Grasselli Chemical Company.

J. B. Stanton for Lake Erie Iron Company.

Arthur T. Waterfall for Detroit Board of Commerce.

Hal. H. Smith and *Thomas B. Moore* for Michigan Manufacturers Association.

Charles P. Halkett for United States Radiator Corporation.

W. J. Breitenbeck for Detroit Steel Products Company.

W. C. LaFebre for General Motors Company.

Ernest L. Ewing for Grand Rapids furniture manufacturers.

J. E. Chamberlain for Grand Rapids Refrigerator Company.

R. R. Darwin for Cadillac Lumber Exchange and Lansing Chamber of Commerce.

John C. Graham for Jackson Chamber of Commerce.

E. B. Rogers for Olds Motor Works.

Eugene Wallace for Battle Creek Chamber of Commerce.

William H. McCloud for Buick Motor Company.

Herman Mueller for Michigan Paper Mills Traffic Association.

C. C. Jeless and *F. L. Marshall* for Piqua, Ohio, Chamber of Commerce.

L. C. Bihler for Carnegie Steel Company.

George C. Wilson for Jones & Laughlin Steel Company.

Harry F. Denig for Pittsburgh Chamber of Commerce.

E. S. Butler for Trumbull Steel Company.

H. E. Graham for Pressed Steel Car Company.

Richard Jones for iron and steel industries in Mahoning and Shenango valleys.

A. R. Kennedy for Pittsburgh Steel Company and Pittsburgh Steel Products Company.

J. C. Davies for Cambria Steel Company.

J. L. Roberts for H. F. Watson Company.

George L. Roberts for Oil Well Supply Company.

J. M. Belleville for Pittsburgh Plate Glass Company.

Frank E. Williamson and *Caleb Clothier* for Buffalo Chamber of Commerce.

John Ormsbee for Boonville Cold Storage Company.

Raymond S. Richardson for Lowville Cold Storage Company.

John G. Duffy for Utica Chamber of Commerce.

N. B. Kelly for Philadelphia Chamber of Commerce.

Morton Z. Paul and *R. C. Jones* for Industrial Traffic Association of Philadelphia.

A. E. Beck for Merchants and Manufacturers Association of Baltimore, Md.

N. L. Moore for Alanwood Iron & Steel Company.

Edward H. Porter for Atlantic Refining Company.

Norman Grey for Taylor Brothers.

R. W. Archbald, jr., for Philadelphia Lager Beer Brewers Association.

G. W. Kerr for American Road Machinery Company.

P. W. Coyle and *A. E. Versen* for Business Men's League of St. Louis.

Robert W. Hall for various St. Louis shippers.

W. O. Bartholomew for Southern Illinois Millers Association.

P. M. Hanson for National Enameling & Stamping Company.

James J. Nolan and *James S. Devant* for Memphis Freight Bureau.

J. A. Thomas for American Snuff Company.

A. W. Sherwood for Alton, Ill., Board of Trade.

William T. Days for Mallinckrodt Chemical Works.

Thomas R. Aiken for Laclede Steel Company.

- C. F. Manners* for A-1 Roofing Manufacturing Company.
F. W. Arnold for Puberight Manure Company.
M. L. Fitzgibbons for French Lumber Company.
Sherman E. Wilson for East St. Louis Commercial Club.
A. O. Galloway for Philip Carey Manufacturing Company.
G. H. Warrington and *R. B. Buchanan* for Procter & Gamble Company.
J. Keavey for Indianapolis Chamber of Commerce.
Frank Van Slyck for Globe Soap Company.
John W. Cobey for National Cash Register Company.
W. P. Tingley for Huntington, W. Va., Chamber of Commerce.
A. E. Singleton for Sheet Metal Club and Whitaker-Glassner Company.
Edward C. Bywater for Edwards Manufacturing Company.
C. N. Davis for Masler Wall Board Manufacturing Company.
William S. Groom for Whitaker Paper Company.
P. L. Shields for Charles Boldt Company.
Henry Graesser for Emery Candle Company.
Ed. C. Rentz for Globe-Wernicke Company.
R. M. Robinson for Greater Dayton Association.
Edward C. Wilder for Manufacturers Association of Cincinnati.
C. S. Bather for Rockford, Ill., Manufacturers and Shippers Association and Federation of Furniture & Fixture Manufacturers.
T. A. Grant for Corn Products Refining Company.
J. N. Thompson for Union Carbide Company, Electro-Metallurgical Company, Linde Air Products and Oxweld Acetylene Company.
W. W. West for La Crosse, Wis., Shippers' Association.
P. H. McCue for Grant Marble Company.
B. Roberson for Abingdon, Ill., Sanitary Manufacturing Company.
J. L. Roberts for Barrett Manufacturing Company.
L. R. Martin for South Bend, Ind., shippers.
L. B. Boswell for Quincy, Ill., Freight Bureau.
G. Roy Hall for Commercial Club of Duluth, Minn.
T. A. McGrath for Minneapolis Civic & Commerce Association.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This proceeding involves the propriety of proposed charges by the respondents for "trap-car" or "ferry-car" service in that part of the country lying west of New England, north of the Potomac and Ohio rivers, east of the Mississippi River, and also that part west of the Mississippi River and east of the Rocky Mountains, including southwestern territory. The term trap or ferry, strictly speaking, is applied to a car placed at an industry or commercial house having a private siding, and there loaded by a shipper with less-than-carload

shipments, and hauled by a carrier to its local freight or transfer station for handling and forwarding of contents; and also is applied to a car loaded with less-than-carload shipments which is hauled to and placed upon the private track of an industry or commercial house by the carrier from a local freight or transfer station. Where such cars are loaded to a prescribed minimum, the practice of respondents has been to make no charge for the service.

In the eastern part of the territory involved the name "ferry" is given to a car used as above described, and in the western part the name "trap" is applied. The origin of the names is not clear. Both mean the same thing, and for convenience the word trap will be hereinafter used.

The proposed charges, hereinafter analyzed more in detail, in trunk line territory, except Buffalo, N. Y., and points taking Buffalo rates, and Pittsburgh, Pa., are 2 cents per 100 pounds, minimum \$2 per car; in central freight association territory, including Buffalo and Pittsburgh, 4 cents per 100 pounds, minimum \$4 per car, with a graduated scale of minimum charges for cars of less than 10,000 pounds loading; and in the territory west of the Mississippi River, including western trunk line, trans-Missouri, and southwestern territories, 4 cents per 100 pounds, minimum \$4 per car.

Hundreds of protests against the proposed charges were received from business men's organizations, boards of trade, chambers of commerce, and other like associations, as well as from individual users of this service. The schedules naming the proposed charges were filed on various dates and have been suspended until September 30, 1915.

It is not practicable to give, within reasonable limits, a detailed description of the situation presented in each of the 85 cities and towns about which evidence was submitted, nor is it necessary to give such detailed description to properly determine the matter in question. The principle underlying the service is everywhere the same. The subject, therefore, will first be considered generally, and separate consideration will be given to the schedules and the justification offered therefor by the respondents in trunk line territory, in central freight association territory, in the territory west of the Mississippi River, and in Chicago, Ill.

THE SERVICE IN GENERAL.

Trap-car service came to be generally rendered without separate or specific charges in the territory involved from several causes. In cases where there was no land available for the location of an industry near to freight stations in congested sections of cities, the assurance of trap-car service made it practicable for the industry to locate in

an outlying district some distance from freight stations. Competition played its part in the establishment and maintenance of the service. An industry located near a freight station of road A was served by a sidetrack connection of road B, which had no freight station in the vicinity. By trap-car service road B was enabled to compete with road A for less-than-carload traffic, which otherwise would all have been drayed to road A. It was a natural step from loading and unloading carload shipments on an industry siding to loading and unloading less-than-carload shipments on the same siding. It was early demonstrated that one of the effects of the service was to relieve congested main freight stations and to make unnecessary the cost of additional freight terminals. The service was also a benefit to the industry or commercial house using it.

For many years previous to the passage of the Hepburn act, in 1906, trap-car service had been rendered by respondents. The character of the service was not uniform, nor did it extend to all points. In some cases it was performed without separate or specific charge, and in other cases charges were made comparable with local switching charges for movements of carload shipments. The filing of tariffs providing for trap-car service began in 1906 and 1907. These tariffs only covered the service where it already existed. There was, consequently, the same lack of uniformity in the tariffs that had prevailed for years without tariffs. October 12, 1908, the Commission, in ruling 97, Conference Rulings Bulletin No. 6, issued the following ruling:

The Commission condemns as unlawful a practice under which a carrier provides an empty car at factory sidings in which the shipper may load less-than-carload shipments which the carrier then moves to its regular freight station, where the shipments are assorted and placed in other cars to be forwarded to their respective destinations. Such a practice is lawful only under definite and clear tariff authority, nondiscriminatory in terms and in its application.

Thereafter tariffs were filed which contained rules with respect to this service. This proceeding has disclosed that the tariffs of some of the carriers are still ambiguous, and that taken as a whole they are not uniform with respect to the service to be performed. In most of them minimum weights are named, to which cars must be loaded if the service is to be rendered without separate or additional charge. If the prescribed minima are not loaded, charges, usually on a per car basis, are named.

The amount of the service rendered by different carriers, or by the same carrier at different points, varies greatly, dependent upon the conditions. At one terminal the average haul is much greater than at another; and at a given terminal trap-car service may involve movements over belt or other terminal lines, with switching absorp-

tions, while at another the service may be performed by line-haul carriers with no absorptions. The service is not confined to large cities, with many and varied industries, but is rendered at all points, large or small, where there is an industry or commercial house with a private sidetrack and sufficient less-than-carload tonnage to load the prescribed minimum. The service is rendered for an industry which ships 2 or 3 cars per week, as well as for one which ships 40 or 50 cars per day. Through arrangements with carriers many shippers, at considerable expense, have erected great operating plants, and movements of cars about them are by means of the shippers' own engines or motors. The carrier serving the industry has but to shove the cars on the tracks of the industry and pull them off after they are loaded. Instances of this kind are the General Electric Company, at Schenectady, N. Y.; Larkin & Company, at Buffalo, N. Y.; and Procter & Gamble Company, at Cincinnati, Ohio. During the month of September, 1914, Larkin & Company shipped 865 trap cars outbound from its Buffalo plant. The General Electric Company, in normal times, ships outbound 900 trap cars per month and receives the same number inbound. Procter & Gamble ship outbound and inbound 4,200 cars per year; Liggett & Myers, at St. Louis, Mo., ship outbound and inbound 8,400 cars or more yearly, and Montgomery Ward & Company, from their two Chicago plants, shipped outbound during the month of February, 1915, 1,582 cars. These are examples of the extent to which the service is used by the larger individual shippers. There are numerous industries scattered all over the territory from which are shipped from 2 to 10 cars per day. The Pennsylvania lines east of Pittsburgh and Buffalo handle 138,000 trap cars yearly, and the New York Central lines east of Buffalo, 60,000.

The movement of inbound trap cars is much less than the outbound. For example, at 22 points on the Pennsylvania Railroad during the week from July 12 to 18, 1914, 1,338 trap cars moved outbound and 479 inbound. There are numerous industries, however, which have larger inbound than outbound movements; many other industries receive all their traffic inbound in carloads and ship all traffic outbound in less than carloads. The largest users of the service, as a rule, have comparatively little inbound traffic. In the aggregate, however, the inbound movement is large.

It has been the practice of the respondents to establish at selected points on their lines what are known as transfer stations for handling and distribution of less-than-carload shipments, which are usually not operated in connection with their regular freight stations. One object of a transfer station is to enable the carrier to transport a car loaded with less-than-carload freight as far as possible on the

way to destinations. Another is to avoid congestion at regular freight stations. Transfer stations are generally located either in the vicinity of large cities or at junction points with important connections. In handling trap cars containing mixed less-than-carload shipments from private sidings the question whether the car shall be carried to a local freight station or to a transfer point is determined by conditions. One test is whether the transfer station is equally available from a transportation standpoint, and another, whether the shipments loaded in the car are consigned to destinations which make them subject to more economical handling at the transfer point than at the local station. Instances are numerous where shippers at request of the respondents load cars so that they may move to outlying transfer points both as a matter of economical railroad operation and expeditious movement of the shipments.

In large cities carriers have established at convenient points within their switching limits freight substations for the convenience of the public. Most of these stations are of limited capacity and have only one or two men to handle shipments. In Chicago there are more than 200 such stations, and the Pennsylvania Railroad has 40 in Philadelphia. From these stations less-than-carload shipments are transported in what may be called railroad trap cars to main freight stations, or transfer stations, for rehandling and forwarding of contents. The service with respect to these cars is comparable with trap-car service rendered to an industry. The service thus rendered in connection with substations, dependent upon their location, may, and often does, cost the carrier more than the service rendered to industries.

The original trap car was one used to transport less-than-carload shipments from industries and commercial houses to local freight stations for rehandling and forwarding of contents. The service has grown until it now includes movements of cars from local stations to private sidetracks, and between private sidetracks and transfer stations, either local or at distant points on or off the line of the carrier serving the industry, and movements from and to distant gateways. In many of the schedules under suspension it is proposed to subject to charges cars loaded at an industry and shipped through to destination, under shippers' seals, without the contents being rehandled by any carrier en route. It is proposed to expand the service to include a car which, by an arrangement with the carrier, is loaded with shipments by the shipper for deliveries in station order and is placed in a road train and moved in the same manner as cars similarly loaded by the carrier at its local freight station. In official and western classifications are rules which require shippers to load and unload less-than-carload shipments of heavy and bulky com-

modities which can not be readily handled by station employees, or at stations where loading or unloading facilities are not sufficient for handling. It is proposed, in many of the schedules under investigation, to apply charges to cars loaded with such commodities. Many commodities are not provided with carload ratings in the official classification, but move under what are called "any-quantity" ratings. Among these commodities are cheese, butter, eggs, poultry, leaf tobacco in bulk, cotton, cotton piece goods, boots and shoes. Cheese loads heavily and moves in considerable quantities. Carloads of this commodity often exceed 50,000 pounds in weight. Traffic moving under any-quantity rates, but in carloads, has the distinguishing feature of having less-than-carload rates, and the proposed charges in many schedules apply to this traffic, even though transported in cars loaded to cubic capacity.

The extra expense to which the carrier is put by reason of a trap car which is moved from an industry to a local or transfer station, as compared with shipments which are drayed to the same station, is the switching, the per diem, and absorptions of switching charges, if any. The record does not show definitely the percentage of trap cars that are rehandled at local stations. In trunk line territory the Erie estimates that 50 per cent of its trap cars move to transfer stations; the Baltimore & Ohio, 35 per cent; the Philadelphia & Reading, 75 per cent; the Lehigh Valley, 75 per cent; the Pennsylvania Railroad, 50 per cent; and the Lackawanna, over 50 per cent. No estimates were made by carriers in other parts of the country, but the evidence of shippers leads to the conclusion that, taking the territory as a whole, about 70 per cent of the contents of trap cars are not rehandled at main freight stations. It does not appear what per cent of less-than-carload traffic is not rehandled at other freight stations or at transfer stations situate within the terminals.

From numerous points commodities are shipped which require blocking in cars to insure safe transportation. Where such commodities are loaded in trap cars the shipper does the blocking at an expense of from 75 cents to \$4 per car. Other cars require cleaning and lining with paper or other material in order that the shipments may be transported without damage. In the use of the trap car the labor to make the car suitable is provided by the shipper and the material is furnished by him.

Many shippers testified that if the proposed charges become effective they will resort to drayage of their less-than-carload shipments. Amongst these were some of the larger users of the service as well as many who ship comparatively small quantities in trap cars. It would cost many shippers less to use the dray than to pay the charges proposed. Many others, both large and small trap-car users, would

probably continue the service. In but very few cities, with respect to which evidence was submitted, are freight station facilities adequate to handle the less-than-carload traffic that would be offered in normal times if any considerable portion of that moved in trap cars should be sent to stations by dray. Facilities have not been built to care for it, and facilities adequate for the purpose in many cities can not now be furnished without the expenditure by carriers of large sums of money. Deliveries to local stations by dray are usually made in the afternoon of each day, and at all points station facilities are taxed to their utmost from 2 to 5 o'clock. Trap-car freight usually reaches the station in the night and may then be handled by station forces outside the rush period.

Traffic carried by trap-car service is earnestly solicited by carriers everywhere. They frequently provide, with respect to carload traffic, that if net earnings are \$10 per car or more switching charges of connecting lines will be absorbed. The Lowrey tariff, which governs in Chicago, provides for earnings of \$15 per car before switching charges will be absorbed. In trunk line territory the prevailing minimum weight prescribed for trap cars is 5,000 pounds; in central freight association territory, 8,000 to 10,000 pounds; and in the territory west of the Mississippi River, 6,000. The record in this case shows that the average minimum earnings on trap cars is greatly in excess of \$15 per car.

Trap-car service is of advantage to its users because it saves drayage of less-than-carload shipments; it permits the loading of both carload and less-than-carload shipments from the same warehouse and also enables the user to load or unload commodities in bad weather without damage to them; it permits the location of an industry or warehouse at some distance from freight stations where land is comparatively cheap; and it obviates rough handling of commodities incident to drayage. The service is also of benefit to the carrier. It relieves very materially the receiving side of outbound freight stations in rush hours; in case trap cars move to transfer points, the carrier is ordinarily saved one handling of the contents; where the shipper loads in station order, or loads shipments to one destination to form the nucleus for an outbound car from the local station, or receives and ships a carload at any-quantity rates, the carrier is relieved from all handling at local or transfer stations; and it enables the carriers to handle the business without the expenditure of large sums of money to build, equip, and maintain adequate freight terminals.

The evidence shows that carriers throughout the territory have actively solicited shippers to use both inbound and outbound trap-car service in order that congestion at local freight stations might be

relieved. Industrial agents of respondents have induced industries to move from one location to another, and often from one city to another, under assurance that trap-car service without additional charge would be furnished. Shippers produced at the hearings written contracts signed by officials of carriers in which it was set out that they would have trap-car, as well as terminal service with respect to carload shipments, without separate additional charge. It is not to be inferred that these contracts are controlling in a consideration of what would be just and reasonable charges or rules governing the service. Many of the respondents admitted that they had assured shippers that trap-car service would be rendered without additional charge. Under these assurances shippers have constructed their factories and warehouses with appliances and platforms to use in the service. Numerous instances are shown in evidence where shippers have sought to abandon the use of trap cars, but at the earnest solicitation of respondents' representatives they have continued their use. As compared with drays, trap cars, the contents of which are rehandled at local stations, furnish a delayed service. Cars are usually placed on sidings early in the day and are removed therefrom late that day or in the night. If shipments are drayed, they ordinarily go outbound from the station the same day. The contents of the trap car, if sent to the local station, usually do not go outbound from that station until the next day, which results in a delay of 24 hours. The desire of the shipper is to have his shipments move out the day the order is received. The exigencies of business as now conducted from a competitive standpoint make desirable the utmost expedition in the movement of less-than-carload shipments. Shippers who have private sidings and use trap-car service now dray much of their less-than-carload freight because of the necessity for expedition. Large users of trap-car service are, therefore, in many instances, also extensive users of drays.

Trap-car service is not confined to shipments of the kind ordinarily described as package or merchandise freight. Heavy iron plates, iron machines, heavy rolls of cable wire, iron drums, radiators and boilers, and other heavy articles move constantly in less than carloads by means of trap cars. Shipments of the character named are confined usually to one such article, but may consist of several. The ordinary trap car, however, contains numerous shipments made up of a number of packages. It is common for a trap car loaded with miscellaneous shipments to contain more than 250 packages. The average trap car contains loading in excess of 15,000 pounds. There are cars which move with loading of 10,000 pounds or less, and there are cars which carry in excess of 40,000 pounds. By cooperation between shippers and carriers trap cars move at a

minimum of expense. In case cars move through to destinations or to distant transfer points, the billing is based on shippers' load and count.

The average cost of handling less-than-carload shipments through freight houses is 40 cents per ton, whether brought there by trap cars or drays.

A large proportion of less-than-carload shipments is loaded into cars that come upon the industry siding with inbound carload shipments. The Pennsylvania Railroad Company estimates that 50 per cent of all outbound trap cars on its system are not switched independently to the industry, but are loaded into cars which have moved inbound under load. What the proportion is for the whole territory does not clearly appear. With different shippers the range is from 15 to 100 per cent. Where the shipper uses for less-than-carload outbound shipments a car which came in under load the carrier is saved one switch movement.

None of the schedules of carriers serving New England territory is involved. No tariffs have been filed by New England carriers which propose changes in existing charges or regulations as applied to trap-car service. The tariffs of carriers serving New England provide charges for trap-car service and contain regulations under which the service will be rendered without separate additional charge. Some carriers in this territory in 1909 filed tariffs naming charges for the service. The charges became effective on all lines in 1912. The general rule in New England is that cars containing 6,000 pounds or more of less-than-carload shipments will be transported free from an industry on a private siding, provided the contents are for one destination or do not require rehandling until an established transfer station is reached. Where the contents of a car are rehandled at a local station, a charge of 1 cent per 100 pounds, minimum \$2 per car, is made.

The advent of great mail-order houses and the growing desire of consumers to buy direct from producers has enormously increased less-than-carload shipments in recent years. The service, begun in a small way, has developed until the movement of less-than-carload shipments by this means is of great magnitude, and with respect to which commercial and transportation interests of the country are vitally interested.

TRUNK LINE TERRITORY.

In trunk line territory, as before stated, with the exception of Buffalo and Pittsburgh, the respondents propose to make a charge of 2 cents per 100 pounds, minimum \$2 per car, for trap-car service. The schedules filed by the respondents in this territory are more

uniform with respect to rules and regulations governing the service than in any other section of the country included in this investigation. In addition to the proposed charge, radical changes in the regulations are also proposed, and even in this territory the definitions of the service are not uniform. The following are illustrations:

Under its existing tariff, which does not conform to the Commission's ruling, the Philadelphia & Reading, I. C. C. J. No. 4749, will transport between industry sidings on its lines and its local freight or transfer stations miscellaneous shipments of merchandise, provided the shipments are of "reasonable quantity or weight." In the proposed schedule, I. C. C. J. No. 4867, trap-car service is defined to be the movement to or from a private siding of a car containing one or more shipments carried at less-than-carload rates. The proposed charge is to be applied to all movements of less-than-carload shipments moving to or from an industry sidetrack. The charge is to be made applicable whether the car is loaded to capacity or moves through under shippers' seals to ultimate destination.

Buffalo, Rochester & Pittsburgh, I. C. C. Nos. 5114, 5115 and 5118, define a trap car to be a car placed at an industry having an individual or private sidetrack and loaded with less-than-carload freight, not including perishable freight requiring refrigeration, to a freight station or a transfer station at point of origin for handling and forwarding of contents; also to a car loaded with less-than-carload inbound freight, not including perishable freight requiring refrigeration, from freight station or transfer station at point of destination to an industry having an individual or private sidetrack.

This tariff does not make the proposed charge applicable unless the contents of the trap car are received at a local freight or transfer station. It does not make the charges applicable to perishable freight requiring refrigeration. In this latter respect it differs from the other tariffs of carriers in this territory.

Central Railroad Company of New Jersey, I. C. C. No. 6991, provides as follows:

The following charge for ferry-car service covering switching of less-carload freight between freight or transfer stations and industries having direct track connections with the rails of the Central Railroad Company of New Jersey on freight to or from points on or via the Central Railroad Company of New Jersey will be 2 cents per 100 pounds, minimum charge \$2 per car, which charge shall be in addition to the rates applying to or from stations at which the private siding is located.

Lehigh Valley sup. 6 to I. C. C. No. B-9522 provides:

The minimum charge for trap-car service, covering switching of less-carload freight between freight or transfer stations and industries having direct connection with the rails of the Lehigh Valley Railroad Company on freight to or from points on or via the lines of the Lehigh Valley Railroad Company will be as follows: At Buffalo, N. Y., and Suspension Bridge, N. Y., 4 cents per 100 pounds, minimum 10,000 pounds; at all

other stations on the Lehigh Valley Railroad, 2 cents per 100 pounds, minimum \$2 per car.

The above provisions seem to limit the proposed charges to movements from or to local or transfer stations of the Central Railroad Company of New Jersey and the Lehigh Valley.

Pennsylvania Railroad G. O. I. C. C. No. 5699 provides the charge for trap-car service, defined to be the movement of a car containing one or more shipments of freight carried at less-than-carload rates, to or from a private siding having direct track connection with the rails of the Pennsylvania Railroad, Philadelphia, Baltimore & Washington Railroad, and West Jersey & Seashore Railroad, on shipments to or from points on or via the railroads named. This provision is similar to that of the New York Central & Hudson River Railroad Company and that of most other carriers in the territory. These tariffs make the charges applicable to every movement in a car of less-than-carload shipments to or from private sidings.

The rule of the New York Central Railroad, lines east, now in effect, I. C. C. B-23318:

Cars containing freight which has been received at or is to be forwarded from stations named herein via the lines of this company, subject to freight charges, will be moved to or from our station freight houses from or to industries having direct track connection with rails of this company, within station limits, under the following conditions:

1. * * *
2. * * *
3. Cars handled to or from industries located on connecting lines' tracks, or private sidings connecting therewith, will be moved free to or from interchange point when cars contain 10,000 pounds or more.

WITHOUT CHARGE.

When cars contain 5,000 pounds or more, or when cars are loaded to their full cubic capacity, free of charge.

SUBJECT TO CHARGE.

When cars contain less than 5,000 pounds, or when cars containing light and bulky freight are not loaded to full cubic capacity, charge will be as shown herein.

The charges referred to are generally \$3.50 per car, but for certain service at Rochester, N. Y., the charge is \$2 per car, while at some points the charge is as high as \$5 per car. Therefore under the proposed tariff of this carrier there might be reductions as well as increases, dependent upon the loading of the car and its destination.

As a general rule the charges now in effect do not apply to light and bulky articles. They do apply to perishable freight requiring refrigeration. The minimum prescribed is now 5,000 pounds, if the service is to be rendered without charge.

The freight traffic manager of the Pennsylvania Railroad represented all the carriers in this territory in justification of the pro-

posed charges. The justification submitted is epitomized in the evidence of this witness as follows:

So far as the trunk line territory is concerned, the proposed trap-car rate was fixed with the idea of yielding the road some revenue, and of not exceeding the cost of drayage, so that in substance the trap-car service would be retained. Our road would prefer not to have the trap-car service discontinued, but we would like to have some money out of it. It is an approximate estimate. Several factors figure in it. * * * It is my intention to state that this 2 cents per hundred pounds which we are making as a charge in trunk line territory is not, as we think, up to the cost of the service, nor is it based upon the cost of service. It was not made upon a cost estimate of the cost of service to the carrier offset by an exact estimate of advantage to the carrier; but it was an approximate figure, fixed for the purpose I have already stated. That is my impression, that was my reasoning, and it was made for that purpose, to meet the objection of the Commission, that we were doing something for the shipper that was discriminatory; therefore, we measured in the value to the shipper rather than for the interest of the carrier.

EXAMINER. Do you yourself think, as a traffic manager of the Pennsylvania Railroad Company, that the trap-car service furnished to the parties who have private sidings at their buildings is a discrimination against the shipper who has not a private siding?

Mr. WRIGHT. I have never been able to see it that way. It seems to me that it is one of the privileges of a man owning a private siding to handle less-than-carload freight. Whether he should handle it free is a matter we are trying to determine, but I could not see that there is any real discrimination in the matter any more than would be in handling a car at a siding is discrimination against the man who hauls through the general delivery.

EXAMINER. If a man is required to dray his freight to a local station and there deliver it, from as great a distance as the man who has the private siding, one has the advantage of the other, or the difference between free service and drayage service, does he not?

Mr. WRIGHT. On carload traffic?

EXAMINER. Less-than-carload traffic.

Mr. WRIGHT. Well, the point of making the charge, of course, is because of the carrier's greater handling, because of the greater handling by the railroads of less-than-carload traffic; but the situation as to carload and less-than-carload traffic in relation to its general delivery on the siding is the same, I should think.

EXAMINER. You mean it is inseparable?

Mr. WRIGHT. The man installs the siding for the purpose of having his carload freight delivered there. He goes to some expense in building and maintaining it, and it is the custom to place the carload freight thereon. When it comes to the less-than-carload freight there are certain costs involved on which this charge was based, or at least the charge was based on the benefits to the shipper from a service which involved certain costs to the railroad.

* * * * *
We made the 2 cents per hundred pounds to make it a little less than we thought the average drayage charge was.

* * * * *
We did not want to shut off those who wanted to dray and we wanted to remove the claim that we were discriminating. We wanted to remove any discrimination. We talked it over and decided that 2 cents would give us some revenue from it, would remove any charge of discrimination that might be in the Commission's mind, and

would not be a great hardship, as it would be less than the average cost of drayage at the big cities if it would not operate too strongly to discontinue the ferry cars.

He testified that trap-car service had a sound transportation reason for its inauguration and maintenance; that the inbound trap car was almost always an expense to the carrier, without compensating benefit; that the outbound car pretty nearly balances advantages and disadvantages; that it would be an advantage to the carrier in as many ways as it would be a disadvantage; that if it would have been possible to segregate the cases where it was, if not a saving to the carrier, at least an offset, and render the service without charge only where it was advantageous to the carrier, that would have been done; and that the difficulty was that in according the service under all conditions and at every place it brought in many expensive cases as well as those which were mutually advantageous to the carrier and the shipper. He further testified that it was not clear that the proposed changes were wise from a transportation standpoint, but that it might be well to wait the developments under them.

No attempt was made to justify the proposed charge of 4 cents at Buffalo and Pittsburgh, as compared with the 2-cent charge at points east thereof. The evidence of this witness, whose statement was general only and did not in any way explain or attempt to justify the various kinds of service proposed to be rendered by different carriers in the territory, constitutes the only justification offered by the respondents for the proposed charges and regulations in trunk line territory.

CENTRAL FREIGHT ASSOCIATION TERRITORY.

In central freight association territory the proposed schedules making charges for trap-car service, and containing regulations governing the service, apparently were hurriedly prepared and filed. What constitutes trap-car service at the terminal of one carrier is entirely inconsistent with the service proposed by another carrier reaching the same terminal. The only consistent provision in the schedules generally is that charges are to be made, and as will be noted later, all respondents in this territory do not make the same charges. Many of the schedules are ambiguous in terms, and the provisions are difficult to understand, and would doubtless lead to various interpretations and result in numerous unlawful discriminations.

The charge proposed is 4 cents per 100 pounds, minimum charge \$4 per car. Most of the schedules also contain the following provision:

It is contemplated that trap cars shall be loaded to a weight of not less than 10,000 pounds, and in the event they are not loaded to this weight the following charges
\$4 I. O. O.

will be assessed in addition to the charge of 4 cents per 100 pounds, minimum \$4 per car:

When cars contain—

	Per car.
9,000 to but not including 10,000 pounds.....	\$1
8,000 to but not including 9,000 pounds.....	2
7,000 to but not including 8,000 pounds.....	3
6,000 to but not including 7,000 pounds.....	4
5,000 to but not including 6,000 pounds.....	5
Less than 5,000 pounds.....	6

The proposed rules and charges in Vandalia Railroad Company, I. C. C. No. 2762, are as follows:

Outbound less-than-carload shipments may be delivered to this company in a car loaded by an industry on its private or individual sidetrack, or inbound less-than-carload shipments may be delivered to an industry in a car on its individual or private sidetrack, subject to the following rules and charges: The charges below stated will be made for this service; they are in addition to the tariff rate applicable from point of origin to destination on the shipments contained in the car, and must be paid by the consignor on outbound and by the consignee on inbound cars:

When car contains—

	Charge.
10,000 pounds or more.....per 100 pounds..	\$0. 04
9,000 to 9,999 pounds, inclusive.....per car..	5. 00
8,000 to 8,999 pounds, inclusive.....do	6. 00
7,000 to 7,999 pounds, inclusive.....do	7. 00
6,000 to 6,999 pounds, inclusive.....do	8. 00
5,000 to 5,999 pounds, inclusive.....do	9. 00
Less than 5,000 pounds.....do	10. 00

Marked changes in the rules governing the service are proposed when compared with those now in effect. The following are examples of the many peculiar provisions governing trap-car service proposed, compared with the provisions in existing schedules. The examples given might be extended indefinitely, but those referred to are deemed sufficient to demonstrate that little or no consideration was given by the framers of the proposed schedules to uniformity, consistency, or other matters which should have had consideration when so radical a change of transportation practices was undertaken.

The following existing rule of the Baltimore & Ohio, I. C. C. No. 6018, is remarkable for the number of its provisions which in 1908 the Commission had declared to be unlawful:

Owners or lessees of private sidings connecting with the Baltimore & Ohio Railroad will upon reasonable notice be accorded the privilege of delivery on or shipping from said private sidings merchandise by ferry cars from or to the freight stations to which the siding is convenient without additional charge, subject to the following conditions:

1. That the private siding is so located and other conditions of such a nature as to require only a reasonable service by the carrier.
2. That such reasonable quantity or weight of merchandise is furnished as to warrant the assignment of a special car for the purpose.

3. That satisfactory arrangements are made for receipting by the railway company for outbound property and receipting by the consignee for inbound property.

In the proposed rule trap-car service is defined to be the movement of a car containing one or more shipments of freight carried at less-than-carload rates to or from a private siding having direct track connection with the rails of the Baltimore & Ohio Railroad, Baltimore & Sparrow's Point Railroad, Monongahela Railroad, or Valley Railroad of Virginia on shipments to or from points on or via the said railroads. The new definition, it will be noted, makes applicable the proposed charges to any car containing less-than-carload shipments which is moved to or from a private siding.

Pennsylvania Company, I. C. C. No. F-573, now in effect provides that—

The term "trap car" or "ferry car" is applied to a car placed at an industry having an individual or private siding and loaded with less-than-carload freight, to be switched to a freight station for rehandling; also a car containing less-than-carload freight switched from a freight station to an industry having an individual or private sidetrack.

No additional charge will be made over the published tariff rate on freight so handled provided cars are loaded to the following minima:

- (a) Freight rated two and one-half times first class or higher, 2,500 pounds per car.
- (b) Freight rated two times first class or higher, 3,000 pounds per car.
- (c) Freight rated one and one-half times first class or higher, 4,500 pounds per car.
- (d) Freight rated first, second, or third class, or rule 25, 6,000 pounds per car.
- (e) Freight rated rule 26, fourth, fifth, or sixth class or lower, 10,000 pounds per car.
- (f) On mixed cars containing commodities subject to various ratings as covered by a, b, c, d, and e, the minimum weight will be that applicable to the lowest rated commodity in the car unless car contains one or more commodities equal to the minimum weight as required by either item a, b, c, d, or e, in which case such minimum weight will apply.

In the proposed schedule of this carrier, I. C. C. No. F-614, is the following provision:

The term "trap car" is applied to a car placed at an industry having an individual or private sidetrack and loaded with less-than-carload freight, except as shown in rule 8, to a freight station or transfer point for handling and forwarding of contents; also to a car loaded with less-than-carload inbound freight, except as shown in rule 5, from freight station or transfer point to an industry having an individual or private siding.

Rule 8 excepts perishable freight requiring refrigeration, live stock, etc.

It will be noted that the proposed rule extends trap-car service to shipments moving from and to transfer points.

New York Central, lines west, in sup. 21 to L. S. & M. S. I. C. C. A-3113 has the following:

The term "trap car" is applied to a car placed at an industry having an individual or private sidetrack and loaded with less-than-carload freight (not including perishable freight requiring refrigeration) switched to a freight station or forwarded direct

to a transfer point for handling and forwarding of contents or for forwarding direct to destination; also to a car loaded with less-than-carload inbound freight (not including perishable freight requiring refrigeration) from freight station or transfer point to an industry having an individual or private sidetrack.

On outbound cars the proposed schedule makes charges applicable to every movement from an industry, but on inbound cars the charges seem to apply only when the movement is from a freight station or transfer point.

The existing rule of the Cleveland, Cincinnati, Chicago & St. Louis, I. C. C. No. 6354, provides that—

Less-than-carload shipments, subject to the minimum weights named below, will be handled free of charge to shippers from industrial sidings on the Cleveland, Cincinnati, Chicago & St. Louis Railway within the prescribed switching limits provided the shipments are subsequently moved over the rails of the Cleveland, Cincinnati, Chicago & St. Louis Railway.

The minimum weights are similar to those of the Pennsylvania Company. The same provision applies to inbound cars.

The proposed rule of this carrier, sup. 15 to I. C. C. No. 6354, is as follows:

The term trap or ferry car is applied to a car placed at an industry having an individual or private sidetrack and loaded with less-than-carload freight (not including perishable freight requiring refrigeration) to a freight station or transfer point for handling and forwarding of contents; also to a car loaded with less-than-carload inbound freight (not including perishable freight requiring refrigeration) from a freight station or transfer point to an industry having an individual or private sidetrack.

Freight in trap or ferry cars will be handled at a rate of 4 cents per 100 pounds (subject to a minimum weight of 10,000 pounds) from industrial sidings on the Cleveland, Cincinnati, Chicago & St. Louis Railway, within the prescribed switching limits to the freight house, in addition to the rate applicable from the main freight station of the Cleveland, Cincinnati, Chicago & St. Louis Railway. Freight in quantities less than 10,000 pounds will only be received at the freight station.

This carrier does not propose to apply the graduated scale of charges which appears in most of the schedules involved to shipments which weigh less than 10,000 pounds. All charges are limited to movements between freight houses and industries located within switching limits. While it is not clear, it appears that the proposed schedule provides that shipments of less than 10,000 pounds will not be transported by this carrier from and to industry sidetracks. However, in its proposed schedule applicable at St. Louis, Mo., and East St. Louis, Ill., the Cleveland, Cincinnati, Chicago & St. Louis defines a trap car to be one placed at an industry having an industrial or private sidetrack and loaded with less-than-carload freight to a freight station or transfer point for handling and forwarding of contents; and also to a car loaded with less-than-carload inbound freight from freight station or transfer point to an industry having an individual or private

sidetrack. The graduated scale of charges on shipments of less than 10,000 pounds are also proposed as applicable to these points.

The Illinois Central does not propose to adopt the graduated scale, and apparently exempts from all charges for trap-car service shipments to and from St. Louis and East St. Louis, if cars are loaded to a minimum weight of 8,000 pounds. The Illinois Central excepts Cairo, Ill., from charges for trap-car service.

The existing rules of the Baltimore & Ohio Southwestern provide for a minimum of 8,000 pounds for trap cars at most points on its lines, and also provide charges on a per car basis for shipments weighing less than 8,000 pounds to be moved to transfer stations within the switching limits. The proposed rules provide for 10,000 pounds minimum weight, minimum charge \$4 per car at all points. This carrier does not propose to apply the graduated scale of charges on shipments weighing less than 10,000 pounds at any point on its lines, including East St. Louis and St. Louis.

Michigan Central I. C. C. No. 4515, now in effect, provides that—

Subject to the minimum weights named below, no charge will be made by the Michigan Central Railroad for switching, within the established switching limits of any station, cars containing less-than-carload shipments from industries, private tracks, or sidings on the Michigan Central Railroad, or from its connections with other roads to this company's freight or transfer house when shipments are for road-haul movement via the Michigan Central Railroad or from industries, private tracks, or sidings, or connections with other roads to the yards of the Michigan Central Railroad (when for convenience of this company cars are forwarded from the point at which loaded without transfer of contents).

The Michigan Central Railroad will switch free of charge from its yards to industries, private tracks, or sidings on the Michigan Central Railroad, within the established switching limits of any station, cars containing less-than-carload shipments, weighing 10,000 pounds or more, consigned to one consignee, when property arrives at destination via the Michigan Central Railroad, provided such delivery can be accomplished without requiring the placing of the cars at this company's freight or transfer house.

The last paragraph of the above rule is incorporated in the proposed schedule of this carrier, sup. 9 to I. C. C. No. 4515. In the proposed schedule a trap car is defined to be a car placed at an industry having an individual or private sidetrack and loaded with less-than-carload freight to a freight station or transfer point for handling and forwarding of contents. Contrast this rule with that of the New York Central. It seems clear that the Michigan Central does not propose to make a charge if the trap car moves through to destination or to a gateway or transfer point off its rails. This carrier specially excepts Joliet, Ill., and Chicago Heights, Ill., from application of the proposed charges.

With respect to many important cities in this territory no evidence was submitted by any respondent in justification of the proposed charges and rules. Notable among these are Grand Rapids, Jackson, Battle Creek, Kalamazoo, Adrian, and Saginaw, Mich.; South Bend, Terre Haute, and Evansville, Ind.; Belvidere, Rockford, Quincy, Moline, and Peoria, Ill. With respect to other cities the justification consisted almost wholly in the submission of statements designed to show the cost of trap-car service. For the most part the statements include out of pocket cost for making switch movements of trap cars from industry sidings to local freight stations. With one exception the figures represent the expense of the trap-car service but not the extra expense of that service over and above other terminal services. In that exception it is shown that trap cars which move through without rehandling of contents en route are moved at a saving to the carrier over any other terminal switch movements. The tables of costs submitted were generally, if not entirely, calculated by charging against trap cars their proportion (based either on car movements or time) of the total engine and yard expenses of the switching district in which the movement was made, and directly chargeable against switching service. Wherever switching had been absorbed on the cars moved during the period under investigation, that absorption was included in the cost. An amount was also charged at the rate of 45 cents per day on all cars for the period that they were in trap-car use from day of placement to and including the day of unloading at freight station.

The results of the calculations based on movements during the months of October, 1913, and April, 1914, at various cities, and the carriers which filed the statements, are as follows:

City.	Railroad.	Cost per car.	Cost per 100 pounds.
			<i>Cents.</i>
Detroit.....	M. C.....	\$4.80	0.0382
Do.....	Wabash.....	3.25	.0224
Do.....	Grand Trunk.....	4.71	.0271
Cleveland.....	C., C., C. & St. L.....	6.15	.0322
Do.....	B. & O.....		.0256
Do.....	N. Y. C. & St. L.....		.024
Do.....	N. Y. C.....	3.08	.0211
Buffalo..	Erie.....		.0238
Do.....	N. Y. C.....	5.20	.0257
Do.....	Grand Trunk.....		.063
Toledo.....	N. Y. C.....	3.01	.0186
Pittsburgh.....	P. & L. E.....	3.61	.0128
Connersville, Ohio.....	C., C., C. & St. L.....	3.02	.0345
Cincinnati.....	do.....	5.27	.036
Middletown, Ohio.....	do.....	3.94	.033
Springfield, Ohio.....	do.....	4.42	.024
Columbus, Ohio.....	do.....	4.15	.0346
Indianapolis.....	do.....	5.14	.....

In addition to the above, statistics were obtained with respect to trap-car movements in certain cities by the Pennsylvania lines for the month of November, 1913. The results as shown by statements on file are as follows:

City.	Cost per car, including absorptions.	Cost per 100 pounds, based on average loading.
		Cents.
Cleveland, Ohio.....	\$6.48	3.06
Cincinnati, Ohio.....	3.36	1.90
Indianapolis, Ind.....	5.04	4.44
Louisville, Ky.....	7.74	4.06
Allegheny, Pa.....	4.44	2.18
Canton, Ohio.....	3.83	2.02
Wheeling, W. Va.....	4.09	3.04
Dayton, Ohio.....	2.29	1.67
Lancaster, Ohio.....	2.65	1.38
Tiffin, Ohio.....	4.67	5.30
Marion, Ohio.....	3.64	2.26

The costs shown by the Pennsylvania lines are based on the cost of switching to or from industrial sidings, using the car as the unit. The expense is figured on a time basis. The items included are engine service, maintenance of way and structures, traffic and general expenses, taxes, freight car repairs, and an amount to represent the loss of earning power of cars through detention in this service. Switching absorptions are included. In these calculations car detention is figured at 56½ cents per day, arrived at by multiplying the total car days by the average freight net revenue per day.

There are many infirmities in these figures which might be pointed out, but the chief is that account was taken only of trap cars moving from industry sidings to freight stations. No account was taken of trap cars which moved through without placement at freight or transfer stations. Assuming that the figures truly represent costs, the net result of the whole showing is that trap-car service costs the carrier a larger or smaller amount dependent upon conditions.

Nowhere in this record is there an attempt made to justify the graduated scale of charges on shipments which weigh less than 10,000 pounds. Carriers' representatives agreed that the charges proposed are for service rendered at the terminals, and that they are not to be considered in connection with line-haul service or revenue. In most of the schedules it is provided that the charges must be collected from the consignor on outbound cars and from the consignee on inbound cars. It is evident that as terminal service it costs a carrier no more to transport a car loaded with 4,000 pounds than one loaded with 10,000 pounds. Most of the respondents in this territory propose to charge \$10 for the movement within the terminal limits of the former and \$4 for the movement of the latter.

Except by presenting cost statements, no attempt was made by any carrier to justify a charge of 4 cents in central freight association territory as compared with a charge of 2 cents in trunk line territory for service of a similar nature. No traffic officer under whose direction the schedules involved were prepared for filing appeared at any hearing in central freight association territory. There is not in this record any explanation or justification offered for the apparently discriminatory provisions of many of the schedules, nor any statement as to what trap-car service is to consist of under the various ambiguous and conflicting definitions.

WEST OF THE MISSISSIPPI RIVER.

The proposed schedules applicable to trap-car service in the territory west of the Mississippi River, including the states of Wisconsin and Minnesota, give evidence of hasty and ill-considered preparation. The charges proposed generally are 4 cents per 100 pounds, minimum \$4 per car. In existing schedules the prevailing minimum is 6,000 pounds, and nowhere in the territory exceeds 8,000 pounds.

A few examples selected from the schedules under investigation will serve as illustrations of the discriminatory and otherwise unlawful provisions which they contain.

The proposed schedule of the St. Louis Southwestern, I. C. C. No. 3351, provides as follows:

On all shipments of less-than-carload freight, upon which the St. Louis Southwestern Railway receives a road haul, which are handled by car between freight houses or train yards of the St. Louis Southwestern Railway Company and warehouses on the St. Louis Southwestern Railway or its connecting lines within the prescribed switching limits at: (Then follow the names of all important cities and towns on the line of the St. Louis Southwestern) a charge of 4 cents per 100 pounds, minimum charge \$4 per car, will be made for terminal service; such charge will be in addition to the through published rate for the road-haul service and will be collected at the point where the terminal service is performed.

The existing schedule of this carrier provides for trap-car service at three cities only, namely, St. Louis, Mo., Memphis, Tenn., and Little Rock, Ark. It appears that the effect of the proposed schedule would be to impose a charge of 4 cents per 100 pounds on all less-than-carload shipments transported by the St. Louis Southwestern to any warehouse on or off its line and without regard to whether the warehouse has a private track. It is difficult to understand what the schedule does mean, but its effect would seem to be to increase the rates for practically all less-than-carload traffic transported by the St. Louis Southwestern to the extent of 4 cents per 100 pounds.

The Chicago, Rock Island & Pacific makes the proposed trap-car charge applicable only at junction points with other railroads. Under the provisions of its proposed schedule a charge of 4 cents

for trap-car movements is specifically made inapplicable at non-competitive stations. At such stations trap-car service without additional charge is expressly provided for. In other ways the schedule is not clearly worded, and it is practically impossible to determine what trap-car service is comprehended. In one of its provisions this carrier specially excepts Liggett & Myers tobacco factory in St. Louis from trap-car charges on outbound traffic. This factory is one of the largest, if not the largest, user of trap-car service in St. Louis.

Proposed schedules of the Missouri Pacific, sup. 9 to I. C. C. No. A-2304 and sup. 84 to I. C. C. 9481, in effect at St. Louis, provide that on all cars containing less-than-carload freight (freight not subject to carload rate and minimum) originating at or destined to industries on tracks of the Missouri Pacific Railway, and other lines destined to or originating at points beyond the switching limits, and on which the Missouri Pacific receives a road haul, a terminal charge of 4 cents per 100 pounds, minimum \$4 per car, will be made for handling to or from the Missouri Pacific depot when such shipments are destined to or originate at points in certain states. There are excepted from the proposed change all the territory east of the Illinois-Indiana state line and all the territory south of the Ohio River and east of the Mississippi River. In the schedule of this carrier now in effect governing trap-car service in St. Louis is the following item:

St. Louis rate will apply on less-than-carload freight received at Tower Grove station (Liggett & Meyers factory) and on less-than-carload freight received at or forwarded from Cupples station handled over this company's lines.

In the proposed schedule is the following exception:

On traffic covered by item 14½, page 3 hereof, charges provided therein will be in addition to St. Louis rate.

The item referred to in the exception names the same trap-car charge as proposed in supplement No. 9 to I. C. C. No. A-2304 and supplement No. 84 to I. C. C. No. 9481.

The so-called Cupples station is in the down-town district of St. Louis, a few blocks from the Mississippi River. It is reached by the rails of the Terminal Railroad Association of St. Louis, over which the Missouri Pacific has trackage rights. The station occupies the lower part of a group of buildings locally known as Cupples block. There are 28 tenants of the buildings who maintain warehouses therein from and to which are shipped large quantities of less-than-carload freight. These tenants take their merchandise from and to the station platforms by trucks which reach the platforms by elevators, chutes, or other means. The expense of maintaining and operating Cupples station is borne jointly by all the carriers which reach St.

Louis or East St. Louis on a use basis. An agent employed by the railroads and paid by them signs bills of lading for each of the carriers. The station is considered as a freight station of each of the carriers which reaches either St. Louis or East St. Louis. It is, therefore, not clear why the Missouri Pacific should apparently consider it necessary to make a charge for trap-car service on traffic to and from Cupples station, unless it proposes to treat the tenants of the Cupples block as industries having a private siding.

The proposed schedules of the Missouri Pacific except traffic from the southeast and east of the Illinois-Indiana state line from the charge for trap-car service at Kansas City and Omaha, as well as at St. Louis, but the charges are applicable at St. Joseph, Mo., where the service is rendered by this carrier.

The proposed schedule of the Chicago, Burlington & Quincy, fourth revised page No. 7 to I. C. C. No. 10, 444, provides that charges for trap-car service will not apply on intrastate traffic in the states of Kansas, Minnesota, Montana, Nebraska, South Dakota, and Wisconsin.

No justification of the proposed charges at any point in the states of Wisconsin, Iowa, Minnesota, Kansas, Colorado, and Oklahoma was submitted by any respondent. Omaha was the only point in Nebraska with respect to which any justification was offered, and at that point the only carrier which submitted a showing was the Missouri Pacific. Out of the 13 carriers which reach Kansas City, only the Missouri Pacific and Missouri, Kansas & Texas appeared.

The carriers in this territory rely mainly upon cost statements. The costs in each statement submitted were based wholly on switching absorptions, per diem, and per diem reclaims. The statements make the following showing:

City.	Carrier.	Cost per car.	Cost per 100 pounds.
			<i>Cents.</i>
St. Louis.....	Term. R. R. Asso.....	\$4.23	3.57
Do.....	C., B. & Q.....	7.03	4.22
Do.....	M., K. & T.....	8.37	5.63
Do.....	C., R. I. & P.....	5.92	4.17
Do.....	St. L. & S. F.....	6.46	2.50
Do.....	St. L. S. W.....	.....	4.57
Do.....	M. P.....	5.85	3.24
Do.....	Wabash.....	3.85	5.80
Do.....	C., C., C. & St. L.....	6.13	5.23
Do.....	Vandalia.....	.....	3.42
Kansas City.....	M., K. & T.....	.....	5.95
Do.....	M. P.....	6.93	4.47
Omaha.....	do.....	6.23	6.72
Little Rock.....	do.....	6.50	6.09
Memphis, Tenn.....	do.....	3.70	2.85
Dallas, Tex.....	T. P.....	.....	2.79
Fort Worth.....	do.....	.....	2.42

None of the statements were based on movements of less-than-carload shipments except those that moved from industry tracks to local freight stations. Many of the carriers which submitted reports do not reach St. Louis on their own rails, and there are large absorptions to be accounted for as well as absorptions of the Terminal Railway Association charges. The latter carrier is owned jointly by the carriers reaching St. Louis. The assistant freight traffic manager of the Missouri Pacific appeared at Kansas City. He stated that where carriers rendered extra service for shippers they were entitled to charge for such service. He considered that trap-car service was an extra service and that 4 cents per 100 pounds was finally fixed upon by the carriers west of the Mississippi River as being a reasonable charge. He admitted that some of the proposed schedules of the Missouri Pacific were ambiguous in terms, and were not carefully considered with respect to exceptions and limitations, but that these could all be corrected after the Commission had determined what would be a reasonable charge and upon what service such charge should be laid.

CHICAGO, ILL.

The charges proposed at Chicago, Ill., are named in supplement 16 to Lowrey's I. C. C. No. 22. In this schedule a trap car is defined as follows:

The term "trap car" is applied to a car placed at an industry and loaded with less-than-carload freight (except perishable freight requiring refrigerator car protection) to be forwarded to a freight station of the road on which the industry is located for handling of contents, or, at issuing carrier's option, sent to one of its freight stations or transfer points for handling of contents, or, at issuing carrier's option, sent to destination; also a car containing less-than-carload freight forwarded, at issuing carrier's option, from point of origin, or contents handled at a transfer point or freight station and forwarded to an industry.

It is to be noted that cars move at the option of the issuing carrier. Just how and when that option would be exercised does not appear.

It is further provided that each car must yield, according to rates prescribed, a minimum revenue of \$15 per car. Minimum weights upon which charges are assessed are 10,000 pounds by eastern carriers and 6,000 pounds by western carriers. Where the minimum weight is on the basis of 10,000 pounds and the weight upon which charges are assessed in trap car is below that amount, the graduated charges in effect generally in central freight association territory are to be made applicable in addition to the charge proposed of 4 cents per 100 pounds added to the rate to Chicago, Ill. Where minimum weight is on basis of 6,000 pounds and the weight upon which charges are assessed in trap car is "5,000 to 5,999 pounds, both inclusive, add \$5 per car; less than 5,000 pounds, add \$6 per car."

34 I. C. C.

At certain universal stations, at which freight is received from all comers and delivered therefrom in railroad trap cars to all railroads, the proposed rule is that the Chicago rate will apply to such stations, but a note to this rule is as follows:

Applies only on traffic handled through freight stations by street vehicles through the public driveway entrances to such stations. On traffic handled through such stations in any other manner, apply rates shown, plus 4 cents per 100 pounds, minimum 10,000 pounds. Less-than-carload traffic, subject to minimum named, must be delivered by one shipper to one consignee in one day.

Such a provision is unlawful. Rates for transportation of freight may not be predicated upon the character of the vehicle from which commodities are delivered on freight platforms or in cars, so long as no additional cost or burden is put upon the carriers.

The proposed charge of 4 cents will increase class rates, in percentages, on the first four classes, from Chicago to various points, as illustrated by the following table:

To—	1	2	3	4
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Milwaukee.....	16	20	27	33½
St. Paul.....	6½	8	10	16
Missouri River.....	5	6	9	12½
Ohio River.....	9½	11.4	15	22
Detroit.....	10	11.7	16	23½

If the charge is imposed at point of origin and at point of destination, as it may be, the percentages above given would be doubled.

The proposed schedule in Chicago subjects shippers to at least four minimum provisions: (1) A minimum weight of 6,000 pounds in case of a western carrier or 10,000 pounds in case of an eastern carrier; (2) a minimum charge of \$4 per car; (3) minimum earnings of \$15 if switching charges are to be absorbed; (4) the freight must pay a minimum freight rate of an amount fixed in a scale of minimum less-than-carload rates.

To justify the proposed charges, the respondents submitted elaborate tables of costs, based on switching absorptions, switching costs in certain cases, per diem, and earning power of equipment used in trap-car service. These figures were ascertained from statements received from agents and from actual observation and cover a period of 25 days. The days selected are the first five days of March, April, June, September, and October, 1914, on the lines of the Pennsylvania Company (Fort Wayne division), Chicago, Milwaukee & St. Paul, Chicago & North Western, and Chicago, Burlington & Quincy. One week only is shown with respect to the Atchison, Topeka & Santa Fe. The switching absorptions are figured on the basis of the Lowrey tariff and range from \$12.75 to \$8.25 per car. To this is added five

84 I. C. C.

days' per diem at 45 cents, which is the Chicago reclaim basis. It is also proposed to add \$10.20 per car as representing four days' detention at \$2.55 per day as the earning power of the car. The earning power of a car was arrived at by dividing the gross revenue of all carriers by the number of cars owned and in service. The tables submitted also purport to show the gross earnings and the per cent thereof of the cost. It appeared upon check by shippers that the earnings were in many instances computed on erroneous weights and on charges that were not paid. It would not serve a useful purpose to reproduce these figures here. Based on the calculation used, the cost of trap-car service is unusually high in Chicago. No figures were obtainable with respect to the cost to the carrier of gathering shipments brought to it at substations and hauled therefrom in cars to its main stations or transfer points. It was admitted that if the substation was located in the vicinity of an industry the cost would be the same as from the industry. The figures do not purport to give the extra cost of handling less-than-carload freight by trap car as compared with that reaching the station by team. Cars must be switched to and from main freight stations to be loaded with less-than-carload shipments and to be transported therefrom when loaded. No estimate was given of the cost of this service, nor the length of time cars are held at main stations. So far as appears from this record trap-car service, while it costs the carrier more in Chicago than elsewhere, is no more costly than movements of other freight in cars. The absorptions which go to make up the cost and the per diem reclaim are common to all movements and are governed by the Lowrey tariff as to absorptions and by agreements among the carriers as to reclaims. The New York Central lines submitted cost figures on the same basis.

Much evidence was introduced by protestants with a view to showing that because of congested conditions of the city streets and freight stations and the practice of carriers of handling less-than-carload shipments through their main down-town stations the business was not economically done, and that through the operation of outlying universal transfer stations the business could be more efficiently and economically handled. Eminent engineers and men skilled in railroad transportation methods testified as to existing conditions and how they might be improved to the advantage of both carriers and shippers. The public policy involved in the imposition of a charge upon a particular terminal service which will result in increase of congestion at already congested terminals, and which will require that carriers make additional expenditures which will not accord with, or be in furtherance of, what is asserted to be sound terminal operation, and which may tend to prevent the adoption of

such operation, is interesting and of great value in considering what shall be done to relieve the streets of a great city from team congestion, and what shall be adopted as a correct terminal policy by carriers in such a city. These questions, however, may not properly be determined in such a proceeding as this. The question here presented is, Have the respondents justified the charges they propose to make for trap-car service and the changes they propose to make in the regulations governing that service?

The schedules under investigation give unmistakable evidence that they were prepared without that investigation and consideration upon the part of the carriers which so important a transportation matter reasonably demanded. It is established by this record that the schedules governing the service, for the most part, were printed and filed without adequate previous knowledge of the cost of the service, or other considerations which should have been the subject of investigation. The cost figures submitted in evidence, for the most part, were compiled months after the schedules were filed. So far as we have been able to ascertain from tariffs on file no carrier, with a single exception, previous to the filing of the schedules here involved, had ever considered that the term trap car included a car loaded on an industry siding with less-than-carload freight and moved through to destination without rehandling of contents en route; or a car loaded in the same manner and which moved to a distant gateway off the line of the originating carrier; or a car that moved loaded to or from the industry the contents of which were carried under any-quantity rates; or a car that was loaded by the shipper in station order and moved to destinations in regular way freight trains. The exception referred to is contained in a schedule of the Lake Shore & Michigan Southern, effective July 1, 1914, which first included all cars loaded with less-than-carload shipments on an industry track as coming within the term trap car. It appears that when it was decided to make a charge for trap-car service definitions were broadened and the rules extended by many carriers to include every conceivable movement of less-than-carload shipments from industry tracks.

It was stated by the freight traffic manager of the Pennsylvania Railroad that the charge in trunk line territory had to be considered in connection with the charge in New England in the interest of uniformity. The uniformity ends at the minimum charge of \$2 per car. The proposed charge in trunk line territory is 2 cents per 100 pounds, as compared with 1 cent in New England. The rules proposed to govern the service in trunk line territory extend to movements that are not now, and never have been, included in trap-car service in New England. Under the proposed schedules trap-car

service is not to be uniform. One carrier proposes to furnish one kind of service and another carrier another and different kind of service, although both carriers reach and serve the same terminal. It is manifest that if the proposed tariffs are allowed to become effective, they will result in numerous gross discriminations; many of them contain unlawful provisions and ambiguous language open to various interpretations; the tariffs do not agree, even at the same terminal, with respect to charges proposed; and many of them contain exceptions which eliminate from the proposed charges traffic of vast territories, states, cities, and individual shippers.

There is a large number of schedules under suspension. With respect to many of them there is no evidence of any kind to justify the charges and rules proposed. With respect to whole states and with respect to many cities and towns there was not even an attempt made to justify what is proposed in schedules applicable thereto. The Northern Pacific Railway Company and the Great Northern Railway Company did not attempt to justify by testimony the schedules filed by them, which make charges for trap-car service at points on their lines. Counsel for these companies appeared and stated that while as a matter of law the schedules would have to be ordered canceled because of a failure to justify the charges proposed he wanted the Commission to understand that the failure to produce testimony to support the provisions of the schedules did not involve any recognition by those carriers that the principle involved is not a correct one and that the proposed schedules can not be and may not be sustained.

In trunk line territory the freight traffic manager of the Pennsylvania Railroad stated in a very frank manner what had been done and why it had been done, but there is no justification in his statement for the proposed changes in the regulations to govern that service. The only justification offered in other sections of the territory involved was the showing made as to the cost of the service. No attempt was made to show what trap-car service costs as compared with the service carriers render shippers who dray their freight to stations. It was admitted that at many points the cost of certain trap-car service from and to sidetracks of industries was not greater than the cost of moving carload traffic to and from the same sidetracks.

It was frequently stated at the hearings by the respondents, and it was reiterated by them in brief and on argument, that charges for trap-car service were proposed in response to suggestions of the Commission in *The Five Per Cent case*, 31 I. C. C., 351. In that case we called attention to the large possibilities for increased net revenues that were afforded by special services which the carriers of the country had been

rendering, and referred to our own inquiries as to possible sources of increased revenue. On page 407 of the report in that case we said:

In the conduct of these inquiries the Commission has not had the full cooperation of the carriers, and the shippers have not had an opportunity of being fully heard. For these reasons our suggestions as to the steps to be taken to secure additional revenues are to be regarded as tentative merely. The information collected and put of record convinces us, however, that great opportunity exists for increasing the net revenues of all carriers in official classification territory otherwise than by resorting to a general advance in their freight rates.

And on page 409 we also said:

The results of this investigation will be submitted later for the consideration of the carriers and shippers. Some hearings have already been held on this subject relating to spotting, trap-car service, loading, unloading, and storage, at which a small part of the information collected by the Commission was submitted and shippers and carriers were heard; but no final conclusion was reached by us, and the further consideration of those inquiries will be later determined by the Commission.

These statements afford no justification for the hasty preparation and filing of tariffs without proper consideration to avoid ambiguities, conflicts, and unjust discriminations, with which these tariffs in the main appear to abound.

Trap-car service has come to be an organized and definite part of the railroad transportation system of the country. Station facilities have been located, built, and operated with a view to the maintenance of the service. With the same view industrial concerns and commercial houses have located factories and warehouses and have expended large sums of money. The service has measurably assisted industrial development generally. By cooperation carriers and shippers have made the trap car an efficient and important instrument for the expansion of both transportation and commercial business of the country. It is not desirable that anything should be done that will seriously impair its efficiency.

Carriers throughout the country have considered, and now consider, their terminals in cities as units for rate-making purposes. Rates applicable to less-than-carload shipments of freight that move outside of terminal districts, or originate outside and move inside, have included the delivery of cars containing them on industrial tracks. The same is true with respect to carload shipments. This rule is applicable without regard to the distance of the haul within the terminal. Rates on both carload and less-than-carload traffic have been maintained with respect to terminal conditions as they exist. Many of the sidetracks of industries are used by carriers as substitutes for adequate freight terminals. The tracks and loading facilities furnished by shippers relieve the carriers' freight stations, necessitating less outlay for expensive terminals in crowded cities, and in other ways aid in the expeditious and economical handling

of traffic which the carriers' facilities are not adequate to handle. *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, 317. Carriers assert, and it is generally recognized, that higher charges are imposed for transportation of less-than-carload shipments than for carload shipments of the same commodities, because the former are loaded and unloaded by the carrier, and because the former entail more terminal and office expense upon the carrier. Should not some consideration be given a shipper who loads and unloads his less-than-carload shipments and furnishes a terminal to the carrier besides?

A carrier performs trap-car service within its terminal. It consists largely of switching cars to and from industry sidetracks from and to freight or transfer stations located within the terminal district. Charges for terminal switch movements are generally made upon a per car basis, and they are usually made with some reference to the amount of the service. There does not seem to be any good reason why trap cars should be excepted from the general rule. If charges are made on a per car basis, they may be graded in accordance with the amount of service required and rendered and need not, therefore, be uniform at all points.

If a consignor orders a car placed on his private track, and he there loads it with less-than-carload shipments, and then orders the carrier to transport the car to its local freight or transfer station for rehandling and forwarding of contents, the consignor has used the facilities of the carrier to dray his shipments. The carrier has rendered a service which is special in character and for which it would seem to be entitled to fair compensation, with due regard to the service rendered. The same character of service is rendered when a car is held at a local freight or transfer station and inbound less-than-carload shipments are loaded into it and it is then transported to an industry sidetrack. If a car is loaded with less-than-carload shipments and is transported between the sidetrack and transfer point outside the terminal district, on or off the line of the industry carrier, or if the car moves between a gateway and destinations, the service at the terminal is not different from that rendered with respect to carload shipments moved from or to the same siding. The so-called trap or ferry car service involved is not a free service.

While conditions may properly warrant a reasonable difference in the charges dependent on the amount of the service rendered, there should be no difference with respect to what trap-car service to which charges are applicable shall consist of. If a trap car is defined so as to include every car moving from or to an industry sidetrack loaded with less-than-carload shipments in one schedule, and in another to include only cars that move between the industry and local freight or

transfer stations, unjustifiable discriminations can but be the inevitable result. There is apparently no difficulty as a matter of tariff construction in clearly defining what is a trap car subject to the charge, and to apply the charge only when the service that warrants its imposition is rendered.

The respondents seem to have prepared and filed the schedules under the impression that it is the duty of the Commission to point out in detail what may or may not be proper to include in such schedules. One of the briefs of counsel for the respondents contains the following:

But if there be found to be any special and valid objection to any particular feature or particular provision of the tariffs under investigation, relating to any section of territory or any particular practice, the entire tariffs will not be condemned by this Commission, but on the contrary, an alternative order will be entered pointing out the feature considered objectionable.

There are more than 130 schedules of individual carriers involved in this proceeding, besides 3 agency schedules which govern the service over large territories, and the Lowrey schedule which governs the service in Chicago. It is an impracticable, if not an impossible, task to consider each of the schedules in detail. With respect to many of them the respondents have furnished no evidence, and with respect to none of them has it been sufficiently shown what would be a reasonable charge for the service involved. The statute casts the burden upon the respondents to show that the charges they proposed to make are just and reasonable. This burden has not been sustained.

If the suspended tariffs were permitted to become effective the inequalities and discriminations pointed out in existing tariffs would be increased, and new discriminations of like character would be multiplied. Under such circumstances we are of the opinion and find that the respondents have failed to justify the charges proposed for trap-car service, or the rules proposed to govern that service, named in the schedules under investigation, and they will be ordered canceled.

It is assumed that respondents will promptly correct tariffs now in effect and remove therefrom ambiguous and unlawful provisions, some of which have been referred to herein.

HARLAN, *Commissioner*, concurring:

Although the respondents are required by the report and order of the Commission in this proceeding to withdraw the tariffs under suspension on the general ground that they are inartificially drawn, are not in harmony with one another, will result in discriminations, and propose charges which in some cases have not been shown by the record to be reasonable, the report nevertheless concedes the propriety of a charge for the so-called trap-car service in its most typical form.

The report shows that the trap-car service, in that form at least, is not substantially different in its purpose and result from the service that the great majority of shippers perform for themselves at their own expense with horse and cart, motor truck, or other similar private vehicles; in using a trap car for his less-than-carload traffic the shipper, we are told, "has used the facilities of the carrier to dray his shipments;" the carrier, on the other hand, "has rendered a service which is special in character and for which it would seem to be entitled to fair compensation with due regard to the service rendered." The report, therefore, announces a principle in which I fully concur and for which, indeed, I have long contended. But it does not deal with the question fundamentally as a service for which a charge ought to be made; and until that general principle is insisted upon more or less confusion will attend the efforts of the carriers to adjust their practices in these matters with fairness to themselves and without discrimination and preference so far as shippers are concerned. The report sets up no guideposts either for the carriers or the shippers and under it the carriers may impose a charge for the trap-car service or continue to perform it as a free service according to their pleasure. These opposing tendencies will not aid in putting the trap-car service upon a sound and stable basis. Shippers are generally not unwilling to pay a reasonable charge for services rendered, and ordinarily the carriers do not wish to indulge in unlawful preferences in favor of particular shippers as against others. The difficulty arises most often from an uncertainty as to what is the right course to pursue rather than from an unwillingness to pursue the right course, and for this reason it seems to be peculiarly the duty of the Commission to point the way by making affirmative and definite rulings with respect to transportation problems of this character.

In my view it is not only the right of a carrier when it performs a "service special in character" to exact fair "compensation with due regard to the service rendered," but it also is its duty to make such a charge. Whenever a special service of value is performed without charge it is as clearly a rebate as would be a secret refund of money, and a rebate in service is as much a violation of the law as a wrongful concession in any other form. The money rebate has practically no existence in the present practices of our carriers, but the same results are accomplished through preferences and free services. Until this fact is fully recognized by the Commission and consistent measures are taken to deal with such practices there can be no real and effective regulation. The report is nevertheless helpful because of the analogy it draws between the trap-car service in its more typical form and the service performed for himself with his dray by the shipper who

has no private siding. The report is helpful also because it recognizes a distinction between a carrier's service and a shipper's service. Unfortunately, however, the distinction appears to be misapplied by the Commission with respect to the less typical form of trap-car operation described in its report.

The trap-car service takes two forms: In one case an empty car is sent to the store door of a shipper having a private track and is returned with his less-than-carload shipments to one of the public stations of the carrier, where a station service is performed and the various shipments are distributed by the carrier into other cars according to their destinations. For this form of trap-car service the report of the Commission recognizes the right of the carrier to make a reasonable charge under properly drawn and nondiscriminatory tariffs. The other form of trap-car operation occurs when a shipper places in one car a sufficient number of shipments, destined to points in the same general direction, to warrant the movement of the car immediately from the store door of the shipper to a more or less distant transfer point in that direction. In this case no station service by the carrier is performed at the point of origin, but the shipments move forward at once in the direction of their destination. With respect to this form of trap-car operation the report of the Commission asks the question "should not some consideration be given a shipper who loads and unloads his less-than-carload shipments and furnishes a terminal to the carrier besides?" The report apparently answers the question in the affirmative by not approving a charge in such cases.

It is true, as the report points out, that in the form of trap-car operation last mentioned the carrier is relieved at its public station of a loading expense on outbound traffic and of an unloading expense on inbound traffic. But simultaneously the shipper is relieved of the expense of loading his wagon at his place of business and of unloading it again at the freight station of the carrier, or vice versa when his traffic is inbound. He is also relieved of the expense of carting his shipments to and from the carrier's public freight station. The Commission nevertheless seems to accept the view that when the less-than-carload freight is not handled through a public station the carrier has not performed the full measure of service which the shipper may demand under the less-than-carload rate and accordingly owes some recompense to the shipper on that account. As an offset, therefore, against the station service not performed by the carrier the Commission seems to hold that the carrier should make no charge for the trap-car service in this form but should haul the shipper's less-than-carload freight to and from his store door without any charge in addition to the rate applicable to

and from the community in which his place of business is located. There are many conditions, physical and otherwise, that may intervene to cause a carrier less trouble and expense in the carriage of the traffic of one shipper than it incurs in the carriage of the traffic of another shipper who pays the same rate. These differences, however, are in the transportation service and have no relation to special services and are therefore disregarded. But because certain large shippers at various industrial points are able to offer the carriers less-than-carload shipments in such quantity as to permit their movement toward destination without a station service at the point of origin, the report of the Commission holds that these shippers stand on a different footing from other less-than-carload shippers to the same destination and must be recompensed for saving the carriers the station service. The carriers are therefore required without any charge in addition to the rate to continue to perform an entirely different service for these shippers by going after their less-than-carload traffic, although by universal agreement it is the duty of a shipper to take his less-than-carload traffic to the carrier and not the carrier's duty to go to the shipper's store door for it. Traditionally the less-than-carload rate covers only the station service and the line haul. It does not include a cartage service. The thoughtful student of transportation matters will therefore at once note that the Commission's ruling with regard to this form of the trap-car service changes the carrier's obligation to less-than-carload shipments. For, by its refusal to recognize the right of a carrier to make a charge for the trap-car service in this form the report of the Commission leaves no room for any other inference than that it is now the duty of the carrier to go after the shipper's less-than-carload shipments without charge, in addition to the rate, whenever they are offered in a certain quantity and under conditions that permit their movement from the shipper's store door in the direction of their ultimate destination without first passing through the carrier's station at the point of origin. The suggestion in the report of the Commission that as there is no station service at the point of origin, in connection with the trap-car operation in this form, there ought not to be any charge against the shipper in addition to the rate, brings to mind the English practice in the construction of rates, and if that practice is consistently carried through our entire rate structure I am not prepared to say that it would be objectionable; but its one-sided application to a single feature of transportation in this country makes the departure from our system the more notable.

Many other thoughts are suggested by the report of the Commission. One is that under its findings, if they are carried into effect in the tariffs of the carriers, the smaller shippers using one form of

trap-car service will have to pay for it, while the larger shippers whose traffic warrants the other form of trap-car service will not pay for it, although the service in each case is essentially a shipper's service in that in each case the trap car may logically be regarded as nothing else than a substitute for the shipper's dray. Again, the question asked in the report of the Commission suggests that a shipper having a private track "furnishes a terminal to the carrier." This suggestion is being pressed upon our attention in connection with other cases of even greater importance than this. It may seem plausible, but in my view it is without substance and tends to confuse the problem before us rather than to throw light upon it. Carriers in some cases may not have adequate terminal facilities; but if they should double and treble the capacity of their terminals shippers who daily handle less-than-carload freight in large quantity from their store doors would still prefer their private track and would not use the public tracks. Such a shipper does not furnish a terminal facility to the carrier in any real sense; he provides himself with a private track of his own because the store-door service is more convenient and has other obvious advantages, besides being less expensive to him, even when a reasonable charge for it is imposed, than the horse and cart, which he would otherwise require to reach the freight station of the carrier with his traffic. He does not construct his private track for the carrier, but for himself only.

It may be true that in the more important communities the investment by shippers in their private tracks leading to their store doors lessens to some extent the aggregate investment required of the carriers in providing terminal facilities for the public, and in this way there may possibly result an indirect saving to the general shipping public in the rates they must pay to provide a return on the carriers' investment in their terminals. But the more direct and far greater saving that springs from the use of private tracks inures not to the general shipping public or to the carriers, but to the larger shippers, who find such tracks an economic necessity in the conduct of their business and therefore build them for their private use and special convenience. The shipper who feels the need of a private track and is willing to go to the expense of building it is undoubtedly entitled to all the advantages that flow from its use; but the right to such advantages does not carry with it the right to the still greater and more valuable advantage of what is equivalent to a free cartage service by the carriers for their less-than-carload shipments.

Without such a track the shipper would have to perform the cartage service for himself at his own cost with his own or with hired vehicles. I am not willing, therefore, to accept the view that when

a shipper has provided himself with a private track he has laid the carrier under the duty of performing, without charge, what is simply a substitute for the cartage service of the shipper. A charge by the carrier of a dollar or two, depending upon the general conditions obtaining in the particular switching district, for doing for shippers with private tracks what the great majority of less-than-carload shippers must do for themselves at their own expense would afford the carriers some compensation for a service that is "special in character." In my judgment this would put a small and fair expense on the shipper that receives the benefit of the service and is relieved of doing the work for himself. It also would tend to equalize conditions as between the horse and cart shipper and the private track shipper of less-than-carload traffic and would recognize the very important principle that every service by a carrier should be made to contribute reasonably to the revenues the general shipping public must provide for the support of the carriers that serve them.

In the principle that permits the carriers to impose a charge for the more typical form of trap-car service described in the report of the Commission I heartily concur; but, for the reasons stated, I must withhold my assent to the view that any trap-car service must or lawfully can be offered to shippers free of charge.

34 I. C. C.

WESTERN TRUNK LINE RULES.

INVESTIGATION AND SUSPENSION DOCKET No. 522.

IN THE MATTER OF WESTERN TRUNK LINES RULES, REGULATIONS, AND EXCEPTIONS TO CLASSIFICA- TIONS.

Submitted April 5, 1915. Decided June 28, 1915.

1. Western trunk lines circular 1-K, I. C. C. No. A-513, containing special rules and regulations and exceptions to classifications, filed to become effective October 1, 1914, was suspended by the Commission until January 21, 1915, and further suspended until July 29, 1915.
2. Rule providing in effect for a carload rating on miscellaneous freight in mail sacks, disapproved.
3. Elimination of rules for mixtures of salt and different kinds of pitch and tar in carloads with cement, lime, stucco, and plaster, approved.
4. Cancellation of rule providing for shipment of cigarette papers with smoking tobacco at the tobacco rating, approved.
5. Carriers permitted to except starch and dextrine from the list of corn products made subject to corn rates.
6. Class B rating on iron and steel pipe applied as a proportional basis, ordered continued.
7. Cancellation of rule providing on plastering hair or fiber with carload shipments of lime or plaster 25 per cent above the carload rate on lime or plaster at actual weight, approved.
8. Elimination of provision for fifth-class rating on straight or mixed carload shipments of stove-pipe iron, stove pipe, stove-pipe elbows, and coal beds, and for mixed carloads of the foregoing articles and sheet-iron dripping pans and stove elbows, authorized.
9. Increase to 50,000 pounds of minimum carload weight on scrap iron into concentrating points, approved.
10. Numerous other rules discussed and changes authorized for publication in a revised circular.
11. Attention directed to views of the Commission in *Investigation and Suspension Docket 76*, respecting publicity of proposed changes and method of classification procedure.
12. Where provisions are eliminated from one tariff in anticipation of publishing them in another the two tariffs should be amended simultaneously.

J. H. Henderson for Iowa Railroad Commission and South Dakota Board of Railroad Commissioners and the Douglas Company.

A. D. Beale for Iowa Railroad Commission.

D. L. Kelley for South Dakota Board of Railroad Commissioners.

E. G. Wylie for Greater Des Moines Committee, Chicago Association of Commerce, and National Enameling & Stamping Company.

F. W. Knoche for Iowa State Manufacturers' Association.

A. E. Solie for Northwestern Cooperage & Lumber Company.

B. H. O'Meara for Douglas Company.

R. C. Fyfe and *F. G. Banister* for Western Trunk Line Committee.

E. J. Seymour and *G. E. Hise* for Chicago & North Western Railway Company.

K. F. Burgess and *A. E. Cooke* for Chicago, Burlington & Quincy Railroad Company.

H. G. Herbel and *F. B. Clark* for Missouri Pacific Railway Company.

H. G. Brown for Chicago, Rock Island & Pacific Railway Company.

J. H. Cherry for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding involves the suspension of western trunk line rules circular 1-K, I. C. C. No. A-513, published by W. H. Hosmer, agent, which proposes to cancel rules circular 1-J, I. C. C. No. A-396. Upon numerous protests circular 1-K was suspended by order of the Commission until January 21, 1915, and by supplemental order until July 29, 1915.

Generally speaking, western trunk line territory comprises the upper two-thirds of the state of Illinois, the states of Missouri, Kansas, Colorado east of Pueblo and Denver, Nebraska, North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and the upper peninsula of Michigan. The carriers comprising the Western Trunk Line Committee have for many years issued a tariff, popularly known as "W. T. L. Rules," which contains special rules and regulations and various exceptions to classifications. Some of these are of general application, while others are limited to particular railroads and specified territories.

HISTORY OF RULES CIRCULAR.

Rules and regulations local in their nature have been incorporated from time to time in this circular for more general application. Rules have also been added to meet unusual or temporary conditions.

OBJECT OF REVISION.

The record shows that some of the rules in question are obsolete and should be eliminated. In many instances exceptions to the rules seem to have been established in lieu of commodity rates, because that was the easiest way to take care of the situation at the time, notwithstanding that this resulted in giving such exceptions unneces-

sary breadth of application. Although the carriers in the past may have been unwisely liberal in establishing exceptions applicable in this territory, such exceptions can not now be arbitrarily eliminated without due regard for conditions existing in consequence of tariff making of this character.

The record indicates that in making the general revision, as shown by the rules circular herein under suspension, the carriers sought to avoid general increases. It is seriously argued, for example, that the inclusion of a single reduction on stock feed, a commodity shipped in large quantities generally throughout this territory, more than offsets any incidental increases resulting from the revision, and that many of the so-called increases are merely paper increases.

Respondents state that the basic idea of the suspended circular was to secure uniformity and to produce an up-to-date publication; that the old circular contained rules so poorly worded as to obscure their real intent, and that many of the rules covered articles generally shipped under commodity rates. All such rules they now seek to transfer to the proper commodity tariffs. Cancellation of a number of the rules is proposed in the interest of uniformity and simplicity. In general the Commission approves of these purposes.

SUMMARY.

For convenience we summarize the case as follows:

(a) *Rules carried forward without change.*—It is proposed to transfer approximately 150 rules to circular 1-K without change, except that they have been given different numbers. These are not discussed in this report.

(b) *Rules changed in phraseology only.*—It is also proposed to transfer to circular 1-K about 66 rules in which the carriers testify that the only changes made were in phraseology. Such of these as were protested are discussed.

(c) *Rules transferred to commodity tariffs.*—About 60 rules were omitted from circular 1-K with the understanding that the individual carriers would publish the same rules in their commodity tariffs. The carriers now state that the necessary publications have been amended, and have submitted a list of such tariffs as a part of the record in this case.

(d) *New rules.*—The following new rules in circular 1-K had no equivalent in circular 1-J, to wit, 65, 275, 345, and 535. Rule 65 was objected to and is discussed. The other rules were brought forward from individual tariffs and effect no change.

(e) *Rules further postponed by stipulation.*—Rules 2040 to 2345 of circular 1-J relate to stoppage of cars in transit to finish loading or

for partial unloading. Respondents agreed to further postpone rules 2080, 2090, 2140, 2150, 2190, 2290, and 2310 pending determination of Investigation and Suspension Docket No. 549, *Stopping of Cars in Transit to Complete Loading or to Partially Unload*. The remaining rules are transferred to circular No. 1-K without change or with changes in phraseology only. They were not protested and are not further discussed.

(f) *Rules in supplements to circular 1-J now under suspension in other dockets.*—Rules 3180-A to 3250-A of supplement 37 relate to the storage in transit of dairy products and are involved in Investigation and Suspension Docket No. 518, *Withdrawal of Regulations Covering Concentration of Dairy Products*; rules 380-A, 550-A, and 1920-D of supplement 36, and 1805-D, 1880-B, 1935-A, 3130-A, 3150-A, 3160-A, and 3170-A, of supplement No. 37, are under suspension in Investigation and Suspension Docket No. 555, *Rate Increases in Western Classification Territory*. With respect to such of these as are approved by the Commission, the carriers will seek permission to make necessary changes in circular No. 1-J. Rule 3258 of supplement 36, providing a terminal charge on less-than-carload freight handled in cars to and from industries was disapproved in *Trap or Ferry Car Service Charges*, 34 I. C. C., 516.

Rule No. 1040 of supplement No. 46 was approved by the Commission in *Rating on Live Poultry in Western Trunk Line Territory*, 32 I. C. C., 380; rules Nos. 2220-C, 2221-A, 2223, 2223-B, 2230-B, and 2250-A, of supplement No. 46, were approved by the Commission in *Hoyt & Bergen v. C. & N. W. Ry. Co.*, 32 I. C. C., 319, and permission will be requested by the carriers to make the necessary publication.

Rules Nos. 1025, 1585, and 2578, of supplement No. 46, are new rules not under suspension, and permission will be requested by the carriers to bring them forward.

We come now to the consideration of specific rules. For convenience the rules are discussed under the numbers assigned to them in circular 1-J, the first item below constituting the single exception.

Rule 65 in circular 1-K is a new rule which provides for first-class carload ratings on articles in the western classification taking first class or lower in less than carloads, when in packages securely roped and inclosed in canvas bags, fastened and sealed, subject to a minimum weight of 10,000 pounds, with a provision that rule 8 of western classification is not to apply. Rule 8 states that, unless otherwise provided for in the classification, all freight shipped in crates, bales, bags, or bundles will take, when shipped in crates, the next class higher than in boxes, and when shipped in bales, bags, or bundles

one class higher than in crates, and that where the same rating is provided for articles shipped in crates or boxes the same articles when shipped in bundles will take the next class higher.

It appears that the proposed rule is really a provision for a carload rating on parcel-post matter, put up in regulation mail sacks, the parcels in the sacks having affixed thereto precanceled postage stamps. The rule is attacked by protestants as being unwise and unreasonable.

The rule under discussion waives all packing requirements of western classification rule 8, and was provided to enable certain interests to avail themselves of the parcel-post short-zone rates and 50-pound limit. The rule is favored by one western line only, other carriers concurring in its application in western trunk line territory for competitive reasons. The official and western classification committees have heretofore declined applications to establish such a rule.

On the facts of record we find that the rule in question is undesirable and has not been justified.

Rule 70 provides first-class rating on harvester machines, self-binding harvesters, mowers, and reapers, and is restricted in its application to certain territory. It is somewhat similar to rule 1280, hereinafter discussed.

Its cancellation is proposed, leaving the western classification to govern, which would have the effect of increasing the rating on less-than-carload shipments, set up, from first class to double first class. This would affect only occasional shipments of harvesting outfits between harvesting points when they can not be hauled overland on account of the condition of public highways. Respondents state that the double first-class rating applies on all of the large set-up agricultural implements less than carload, but that as a matter of fact harvesters and reapers are too large to be loaded in box cars and are usually shipped knocked down or on open cars, and that, therefore, a minimum of 5,000 pounds, first class, would be assessed if loaded set up on open cars, or third class at actual weight if knocked down in box cars. These machines weigh about 2,000 pounds each, and on basis of 5,000 pounds at first class the testimony shows that the charges would be slightly in excess of double first class at actual weight.

We find the carriers have justified the change.

Rule 109 makes provision for one-half fourth-class rates on secondhand empty bottles from points in Minnesota and North Dakota and South Dakota to St. Paul and Minneapolis, Minn.

The western classification rates empty bottles in general when actually returned to shippers of ale, beer, and porter, wines, soda waters, and other like freight one-half fourth class, but prevents the application of this rating to shipments of secondhand bottles such

as those made by junk dealers, who clean and reship them in competition with new bottles, or to other than bona fide returned shipments.

It is proposed to cancel the rule. We are of the opinion that the cancellation should be permitted.

Rule 160 provides for application of brick rates on cement or concrete building or paving blocks, subject to a minimum weight of 40,000 pounds.

It is proposed to cancel the rule because necessary provision has been made in commodity tariffs. Protestants' objections were based on the erroneous theory that this would result in an increase in the minimum to 50,000 pounds. As a matter of fact, under the rules circular protestants have not had the benefit of the 40,000-pound minimum, as it provides that specific rules in commodity tariffs governed by it take precedence. Where no commodity rates are in effect the western classification rating and minimum would apply, hence no real change is effected.

The necessary commodity tariffs having been amended, the rule may be canceled.

Rule 240. It is proposed to cancel this rule, which provides one-half fourth-class rates on returned empty mineral water carboys. Circular 1-K eliminates this provision for the reason that western classification carries a somewhat higher basis, fourth class, than the general returned bottle rating.

Respondents argue that care must be exercised in loading these carboys, as other freight can not be placed on top of them; that the breakage is very heavy, and that shippers of mineral waters are using a 5-gallon bottle in lieu of carboys, which bottles take one-half fourth-class rates.

No objections were recorded. The carriers may effect the cancellation.

Rules 290 and 300 may be discussed jointly. •

Rule 290, which is of general application, provides for a mixture of two or more of the following articles: Cement (hydraulic), cement (portland), lime, pitch (asphaltic), pitch (coal tar), pitch (petroleum tar), plaster, stucco, tar (coal), tar (asphaltic), tar (petroleum), and wall plaster, at the highest rating and minimum weight governing any commodity contained in the car.

Rule 300, which is of restricted territorial application, provides for class D rates on cement, hydraulic and portland, lime, pitch of various kinds, salt, stucco, tar of different sorts, and wall plaster from St. Paul, Minneapolis, Minnesota Transfer, and Duluth, Minn., and points taking same rates, and from Chicago, Ill., Milwaukee, Wis., Peoria and Joliet, Ill., and points taking same rates, to sta-

tions in Minnesota, North and South Dakota. It is not applicable to points on the Chicago & North Western Railway in South Dakota west of the Missouri River, nor to points on the Pierre, Rapid City & Northwestern Railway. Apparently this was first published to take care of intrastate shipments and gradually spread. It is in effect by law in Minnesota, but respondents purpose to ask for authority to eliminate it. By canceling it from the rules circular they expected to withdraw it from operation to the Dakotas, where it is alleged to have outlived its usefulness.

It is proposed to establish a single rule the effect of which would be to eliminate pitch, tar, and salt from mixing privileges with the other articles and to apply to these articles the class C basis where no commodity rates are in effect.

Protestants object to the proposed changes on the ground that these articles are actually handled in mixed carloads by roofing concerns and dealers in lumber and building materials in small towns, and that the changes would effect increases.

Respondents argue with respect to rule 290 that this mixture is not required commercially; that it was originally established through an erroneous application of the term "coal-tar paving cement" to coal-tar pitch; that to be handled successfully these materials must be bought in straight carloads; that dealers in cement or coal tar never have requests to add cement with any of the other commodities under discussion; and that the mixture which dealers in roofing material require is of a different nature.

With respect to rule 300, respondents rely upon *Rates on Cement, Lime, and Salt*, 32 I. C. C., 532, wherein we said, at page 534:

The carriers urge that the cancellation of this rate is intended *inter alia* to remove the discriminations which it makes possible between shippers and between the points of origin from which cement and salt move in straight carloads. They assert that it is possible to avoid the straight carload rate by shipping practically a full carload of cement or salt, to which a small quantity of one of the other commodities is added for the purpose of taking advantage of the lower 35-cent rate applicable on the mixture.

Respondents further argue that there is no good reason why coal tar should be allowed to mix with a food product like salt, or why coal tar, which is produced by one plant and is not used with lime, which is produced by another plant, should be allowed to mix with it; that all of these commodities are drawn from different parts of the country and do not represent a general line handled by jobbers; and that there are no shipments of cement from points producing coal tar, although they might happen to be used by the same interests.

Respondents further testify respecting both of these rules that, by rule 190 in circular 1-K, they have retained a reasonable mixture, applicable to all western trunk line territory, providing for cement,

lime, plaster, stucco, and wall plaster, which it is maintained covers the general line of these commodities usually handled by dealers in building material.

The articles in these mixtures are supplied with commodity rates, especially cement and lime, which are of advantage for straight car-load shipments, and a mixture applicable generally to western trunk line territory has been continued for the general line of goods handled by dealers in building material.

As to rule 290, we can see no good reason for requiring mixtures of pitch and tar with cement, lime, plaster, and stucco, and find that the elimination of this mixture has been justified. As to rule 300, the question is whether salt and pitch are shipped in mixed carloads with the building material named to small dealers in the restricted territory where it is applicable and if the provision for mixed carloads of building material as provided for under rule 190 in the new circular is adequate to meet the requirements of interested shippers. We think it is, and find that respondents have also justified the cancellation of this rule. It may be eliminated.

Rule 310 provides smoking tobacco rates on cigarette paper for advertising purposes packed in the same cases with smoking tobacco. It was not satisfactorily explained why an exception of this nature was ever established in western trunk line territory only.

It is proposed to cancel this rule, thus applying the general rule of the western classification governing mixed packages, which states that the charge for a package containing articles of more than one class shall be at the rating provided for the highest classed article contained in the package. Under the western classification the rating on smoking tobacco varies from second class to double first class, depending upon the package in which it is shipped. The tobacco with which cigarette papers are used is usually granulated and is subject to the second-class rating, whereas the papers take the first-class rating. Respondents contend that these papers are a substitute for papers otherwise shipped separately at the first-class rating; that the quantity that can be shipped under this exception is not restricted; and that there are available other exceptions of more or less general application in western classification authorizing premium packages to be shipped at 110 per cent of the rating governing on the articles with which the premiums are shipped.

The only objection offered was reference by protestants to what we had to say in *Iowa Soap Co. v. C., B. & Q. R. R. Co.*, 16 I. C. C., 444, respecting premium safety pins accompanying shipments of soap.

The Commission is not convinced that an exception of the kind here involved, which is applicable to limited territory, should be

made with respect to an article that is so universally used as cigarette papers, and takes the view that this rule may properly be eliminated.

Rule 390 provides for free transportation to the original point of shipment of canvas covers or tarpaulins shipped with ice to protect it from heat. One carrier applies the rule only when no allowance for packing has been made on outbound shipments.

It is proposed to cancel this rule. The result would be to apply western classification first-class rating on tarpaulins and shipping covers for freight during transportation. The carriers state that this rule is inoperative because paper is now in general use for protection of ice. The rule may be eliminated.

Rule 440 is applicable only on the Wisconsin & Michigan Railway. It covers locomotives, logging or industrial, moving under their own steam, and provides a charge of 25 cents per mile subject to a minimum of \$10. Its cancellation is proposed, the effect of which would be to make applicable a uniform rule that makes a separate charge for fuel, water, and other supplies, wages of employees, etc.

No objection was expressed to the proposed change, and it may be made.

Rule 540 provides for free transportation of cans containing young fish, crates of fish eggs, in baggage cars, and empty cans and crates, returned; also fish cars and fish cans in the service of state or United States fish commissions used for transporting fish for deposit in waters reached by the rails of certain lines. The rule provides for attendants and specifies that they must be supplied with regular transportation.

It is the desire of the carriers to cancel this rule. They state it is unnecessary, because under the Commission's rules such government shipments may be handled free of charge without tariff publication. Objection having been expressed, the carriers signified their willingness to continue the rule, and should arrange to do so.

Rule 550 provides for rates on flax moss, flax tow and shives, carloads, minimum weight 20,000 pounds, which is the hay minimum; for hay rates and minimum weights on flax straw, thrashed, carloads; and for class B rates on flax straw, unthrashed, carloads, subject to the hay minimum weights. The rule is not operative between points in the territory subject to Illinois classification.

Flax moss, tow, and shives and thrashed straw have been transferred to commodity tariffs at the hay rates and minimum weights, but it is proposed to cancel the provision for unthrashed flax straw, which would subject this commodity to a minimum weight of 24,000 pounds, subject to western classification rule 6-B, and would operate to increase the minima for cars of extra length over the hay minima applying under the rules circular. A protest was submitted on

behalf of one mill at one point to the effect that unthrashed straw would not load to 24,000 pounds.

Respondents assert that this unthrashed straw will load heavier than hay and should more properly be subject to the classification; that it is a more valuable product on account of the flax in it, which is sold at the point where the flax is shredded for the purpose of being worked into material for the manufacture of twine; that large consumers of this product at St. Paul, where binding twine is extensively manufactured, have not complained of the proposed change; and that while as a general thing increased minima would result, depending upon the size of car used, some reductions would be effected.

Upon the facts presented the proposed change is approved.

Rule 560 provides that shipments of flour from Beloit, Wis., to stations in Illinois may be accepted subject to the Illinois classification in connection with the interstate distance tariff. Beloit is just north of the Wisconsin-Illinois state line.

This provision is proposed to be canceled, leaving grain and grain products rates to apply, such rates being in effect from Beloit to many Illinois points, such as Chicago, Peoria, etc. No serious objections were entered by the protestants. Attention, however, was directed to the fact that there are some points in Wisconsin and Iowa from which the rates to Illinois points are subject to Illinois classification. Respondents attempt to justify the elimination by stating that so far as class rates are concerned those applicable from Beloit to Illinois stations are subject to the Illinois classification; that this is a preferential provision of purely local application covering one commodity and that the individual lines using it should, if the basis is to be continued, provide for this use of the Illinois classification basis in their tariffs. When the proper tariffs are so amended, this rule may be eliminated.

Rule 570 provides for soft lump coal rates and minimum weights on foundry facings and was established to cover ground coal used as foundry facings. It is not applicable in any territory governed by the Illinois classification.

It is proposed to cancel the provision, which would result in an increase to the classification basis on the high-grade compounded foundry facings and a reduction on some of the low grades. It is contended by the carriers that commodities such as liquid preparations for foundry facings, and mixtures of coal with relatively high grade commodities, like talc flour, red dog flour, and graphite, should never have been placed on the soft lump coal basis. No serious objections were entered.

The carriers have justified the proposed change, and the elimination may be made.

Rule 660 provides for corn rates on designated commodities including "all uncooked grain or cereal food products manufactured from corn." It is proposed to change this rule to read, "Also uncooked cereal food products, manufactured from corn. (Does not include dextrine and starch.)" No protests were received with respect to dextrine, which article protestants say should be properly omitted from the corn list.

A representative of starch manufacturers testified that the effect of this change would be to remove starch from the corn products list, thereby subjecting it to fifth-class rates and depriving it of certain transit services which it now enjoys and has enjoyed for years past.

Protestants argue that the rule now authorizes corn rates on starch; that except where specifically excepted all transit tariffs apply to starch the grain or grain products rates, and as many commodity tariffs apply in one direction only, unless the rule in question is continued higher rates will result on returned shipments of damaged starch than apply on the same starch shipped from the mills.

Further objection is made to the elimination of the words "grain or" on the ground that this will prevent the transportation at corn rates of uncooked products of corn, whether for food or not; that starch being an uncooked cereal food product would, even if these words were eliminated, still come within the rule but for the added words "does not include dextrine or starch." Respondents contend that the omission of the words "grain or" effects no material change, since the word "cereal" includes the full meaning of the double phrase now in use; that the rule was never meant to apply and could not have been reasonably interpreted to apply corn rates on uncooked grain, and that the word "grain" was merely used to describe the food products just as cereal is used. Respondents assert that the changes made are a crystallization into tariff form of conditions in effect under the present rule. While the corn products list in the present rule does not specifically exclude starch and dextrine and the proposed rule does so exclude them, they maintain that the proposed rule would effect no change. They further argue that in revising this rule they realized that transit authorized corn rates on starch, but that the rule under discussion was never used in determining starch rates or applied in the shipping of starch, and further, that the rule, as well as some of the individual tariffs, excludes starch from corn rates.

Respondents refer to our conclusions in *Douglas & Co. v. Illinois Central R. R. Co.*, 31 I. C. C., 594, where we said:

Upon a full consideration of this matter we are of the opinion that starch does not constitute such like kind of traffic with corn meal, hominy grits, brewers' grits, corn flour, and other uncooked products of corn as is contemplated

under section 2 of the act, and that under this section no discrimination has been shown because of the withholding of the transit privilege from corn milled into starch.

Upon the facts of record we hold that starch and dextrine may be excepted from the list of corn products made subject to corn rates by the rule in question.

Circular 1-K further amends the rule by adding to the corn products list live-stock feed, not medicated or condimental, in bulk or sacks, which constitutes a material reduction in the rating on a commodity that is shipped in large quantities. It is asserted that this reduction will more than offset all the increases resulting from the revised circular.

Rule 710 provides for the agricultural implement rates and minimum weights on grain-weighing machines.

It is proposed to eliminate this item because of its indefiniteness, allowing the western classification to govern. Protests are made to this because it removes the application of the agricultural implement rates and mixing privileges on certain types of so-called grain-weighing machines used on thrashers. The chairman of the Western Classification Committee testified that the matter is now under consideration by that committee and that it would in all probability provide the agricultural implement rating on the outfit used in connection with thrashing machines, which would remove protestants' objections.

When the western classification is so revised the rule in question may be eliminated.

Rule 780 publishes third-class rating on liquozone, carloads, minimum weight 40,000 pounds. It appears that this was established to govern a proprietary medicine, the production of which has been stopped. The provision should be eliminated.

Rules 840, 850, 860, and 870 cover various exceptions with respect to lumber and articles taking lumber rates or differentials over the lumber rates. Rules 130, 520, 525, 530, 2400, and 3880 of 1-K make changes for purposes of clarification.

Briefly stated, the position of the carriers is that, although such was the intention, the old circular does not show that certain articles made of valuable woods will take certain differentials higher than when made of common woods. The new circular makes this clear. Full and satisfactory explanation of all changes was made. The only objection offered was to the elimination of the application between points in Wisconsin, and on interstate traffic between points in Michigan and points in Wisconsin, of the 1-cent arbitrary over the lumber rate on basswood veneer, birch veneer, and elm veneer.

Respondents have signified their willingness to continue this basis and the amended rules may be published in accordance with the stipulations of record.

Rule 950 provides for fourth-class rates on paper roofing, less than carloads, taking third class in the western classification with restricted territorial application.

Circular 1-K proposes to cancel the rule, thus permitting the application of the western classification basis throughout the territory. No objection was recorded against this action. We think that the rule may be properly eliminated.

Rule 990 provides that pine cones in boxes, barrels, or sacks, between points in Wisconsin and upper Michigan, state or interstate, shall take third class in less than carloads and fourth class when in carloads, subject to a minimum weight of 30,000 pounds. Circular 1-K cancels the rule because the western classification carries the same basis. The cancellation may be made.

Rule 1000 provides for class B rates on pipe, iron or steel, cast, wrought, welded or seamless, in restricted territory. It is sought to cancel the rule, leaving western classification fifth-class rating to apply.

Respondents assert that the elimination is in the interest of uniformity; that this is another case where a rule, originally intended for local application, spread without reasonable justification, and that the increase would be applicable to a limited territory.

Protestants say that the cancellation would result in a general increase. They state that there are no through rates on this traffic from producing points in the south to South Dakota destinations except such points as Watertown, Aberdeen, and Sioux Falls; that the class B rating was in fact established by this rule to serve as a proportional basis in connection with the rates from Birmingham and Anniston, Ala., and other southern points; that the withdrawal means that through rates will be made up of commodity rates to the three points named plus fifth-class locals beyond, or increases ranging from 10 to 15 per cent, depending upon the difference between class B rates and the regular fifth-class rates; that through rates are in effect to points in Iowa and possibly to points in Minnesota; and that the full combination would be excessive and prove a hardship, there being a considerable movement of pipe from southern producing points to points in South Dakota.

It does not appear that the carriers propose to amend their commodity tariffs to preserve the present adjustment, and on the facts of record we think the cancellation is not justified.

Rule 1020 provides that 25 per cent above the carload rate on lime or plaster shall apply on shipments of plastering hair or fiber, based on actual weight, loaded with carload shipments of lime or plaster.

It is proposed to cancel the rule, which would subject hair or fiber to the western classification basis and lime and plaster to commodity rates.

Respondents state that no mixture of these articles is provided in the western classification because there is no necessity for it; that shippers of lime do not object to the withdrawal of the rule; that plaster mixed with fiber or hair, which moves at plaster rates, is being increasingly used; that the combination article, being practically all plaster, loads very heavy, while hair in separate form, even in machine-pressed balēs, is very light and is worth much more; that there are two classes of this hair or fiber, namely, cattle hair and wood fiber or decorticated or reworked rope or hair, which material loads very light, and that if there are only a few sacks of hair or fiber to be shipped it would be cheaper to forward them at the less-than-carload rating and the lime and plaster at commodity rates than to pay the additional 25 per cent.

Protestants argue that the commodities in question are commonly associated in use and claim that the cancellation would create a material increase on such carload shipments as might consist of half hair or fiber and half plaster. The carriers state that such shipments are not large in volume.

No evidence is submitted to show that the elimination of this mixture would work a hardship. The rule in question may be eliminated.

Rule 1070 provides for class D rates on wooden pumps, carloads, and on mixed carloads of wooden pumps and wooden tubing.

It is proposed to cancel the rule, thus allowing the western classification class B rating to govern. The description there carried was drawn by the Committee on Uniform Classification.

Respondents show that wooden pumps are usually equipped with a working barrel, enameled inside, and wooden tubes, bored and trimmed, the outfit being painted; that the class D basis often results in lower than lumber rates, which is manifestly too low; and that the rule is indefinite and might be applied on certain types of chain or elevator pumps that are very light.

No objections were expressed to the cancellation of this item, and such action may be taken.

Rule 1100 provides for free transportation of refrigerator barrels, boxes, crates, galvanized-iron pans, tanks, ice cones, hooks, meat sticks, racks, stilts, and trays, used for the transportation of meats and other perishable freight in peddler cars, the articles transported to be treated the same as empty cars, and no receipt or bill of lading to be taken or waybill issued and no liability to be assumed for the property.

The proposed rule provides that the necessary accessories used in the transportation of meat and fresh fish in refrigerator cars, consisting of the articles above named, loaded by shippers and unloaded by consignees, will be returned free to the point of shipment, and it continues the provisions as to the billing and nonliability. It, however, limits the free return to point of shipment and to the accessories used in the transportation of meat and fresh fish in refrigerator cars. No objections were expressed. The proposed rule was published and this proceeding submitted before the passage of the Cummins amendment to section 20 of the act to regulate commerce, approved March 4, 1915. No testimony with reference to the point in issue here was submitted. If the proposed rule is not in consonance with the provisions of the Cummins amendment, carriers should revise the rule so as to bring it within the requirements of that act.

Rule 1160 provides for certain carriers that shipments received from another carrier and found to have been damaged in transit, necessitating return to the shipper for repairs, will be returned free over the route by which it was forwarded. It provides for certain other carriers that shipments, received at their stations, which have been damaged in transit and are refused by consignee may be returned free to shippers for repairs or reconditioning. It is proposed to cancel this rule.

Respondents argue that the rule relates to the handling of freight for carriers only and is not one which requires publication in tariff form; that it was originally published for claim agents, and that it is now taken care of by the Commission's rules.

The Commission requires, rule 67, Tariff Circular 18-A, that rules of such character shall be published. The proposed cancellation has not been justified, and the rule should be continued.

Rule 1170, which it is proposed to cancel, provides that "shipments tendered by or consigned to United States government" will take commercial rates, subject to regular land-grant deductions. The carriers do not feel that it is necessary to continue this item, as rule 390 in circular 1-K fully covers shipments of government freight. There is no objection to the cancellation.

Rule 1175 provides that silos, knocked down, will take class D rates subject to a minimum weight of 30,000 pounds, with restricted territorial application. The rule was established to meet an emergency brought about by the suspension of western classification No. 51, which publication increased the carload rating to class B. The class D basis was afterwards voluntarily restored in the western classification, and there is no necessity for the rule. The exception may be eliminated.

Rule 1190 provides fourth class, less than carloads, and fifth class, carloads, subject to a minimum weight of 36,000 pounds, on iron and steel sleigh knees or sled knees, in bundles or loose, in pieces weighing 40 pounds or more. It is proposed to cancel the rule, applying instead the western classification, which authorizes first-class rating on bobsled knees, weighing each less than 100 pounds, loose; fourth class when weighing each 100 pounds or over, loose; third class when in bundles; and fourth class when in barrels or boxes, all less than carloads. No protests were received. The carriers reported that no shipments of any consequence could be located. There is apparently no reason why the change should not be made.

Rule 1240, which it is proposed to cancel, authorizes fifth-class rating subject to minimum weight of 24,000 pounds on straight or mixed carloads of stove-pipe iron, cut in shape for stove pipe, nested, stove pipe, stove-pipe elbows, and coal hods, and on the foregoing articles in mixed carloads with sheet-iron dripping pans and stove boards. The cancellation is protested on the ground that it would prevent the mixture of sheet-iron dripping pans and coal hods with certain other articles usually purchased together and commonly used together, and that the mixture is commercially necessary, especially for those who can not take straight carloads. Protestants point out that western classification subjects shipments to rule 21-B thereof, which prevents application of carload ratings to straight carloads of articles subject to the rule, and state that when the Western Classification Committee had under consideration restriction of the mixtures they offered no serious objections because they relied upon the western trunk line exceptions, now in controversy, to take care of their shipments.

Respondents aver that the mixing privileges and straight carload ratings in western classification were established with particular regard for protestants' business requirements and that under them dripping pans can be mixed with air-tight heaters, stove pipe, stove-pipe elbows, stove-pipe fittings, stove-pipe iron cut to shape, and coal hods, at the fifth-class rate, minimum weight 20,000 pounds. The classification rates coal hods third class, minimum weight 14,000 pounds, graduated higher for cars of extra length, and respondents contend that the present rule is unreasonable in that it authorizes on straight carloads of very light loading articles the fifth-class rate which governs on the raw material from which the articles are made; that it is discriminatory against other articles of like weight and that it is out of line with provisions of the classification generally and with commodity tariffs. They point out that instead of paying third class based on reasonable loading shippers may under the present rule ship

coal hods in a 50-foot or larger car at fifth class for only 24,000 pounds weight or may use such a car under the same rate and minimum load for a small quantity of sheet iron with 20,000 pounds or more of coal hods.

A statement submitted by protestants of certain shipments made under the provisions of the present rule analyzed by respondents shows that of a total of 56 carloads, 35 consisted entirely or chiefly of articles which would not be affected by the change proposed. One shipment of 31,083 pounds of coal hods was loaded in two 40-foot cars and another, apparently consisting of 23,340 pounds of coal hods and 1,000 pounds of stovepipe elbows, was loaded in a car of 60,000 pounds' capacity. The remaining 19 cars would with a single exception properly move at fifth class under western classification.

Upon consideration of all the facts of record we conclude that the carriers have justified the elimination of the rule in question.

Rule 1270 authorizes third-class rates on tents and fixtures, carloads, minimum weight 18,000 pounds, subject to graduated minima for cars over and under 36 feet in length.

Respondents propose to eliminate this rule, which would have the effect of applying the western classification third-class rating, subject to a minimum weight of 24,000 pounds. Objections made were withdrawn at the hearing, and the change will be permitted to go into effect.

Rule 1280 provides for class A rates, minimum weight 24,000 pounds, on thrashing outfits, secondhand, consisting of thrashing machinery, farm wagons, harness, camp outfits, and not to exceed 10 head of horses or mules. It is somewhat similar to rule 70.

It is proposed to eliminate this rule on account of its restricted territorial application, the western classification to apply instead. The carriers testified that these outfits are shipped by rail only when the public highways are in such condition that they can not be hauled overland; and that of necessity ordinarily the thrasher and engine would have to be loaded on an open car and the remainder of the outfit in a closed car, which would mean the application of class A rating on the first car and emigrant outfit rating of class B on the second car.

Protestants object on the ground that the rating of emigrant outfits in the western classification is restricted to "property of an intending settler." In answer to this respondents state that their interpretation is the one that has been placed on the western classification for years past, and that they purpose to hereafter eliminate these words. With this understanding protestants stated they would waive objection to the cancellation of the rule.

When the note in connection with emigrant movables in the classification is amended as suggested this rule may be eliminated. Until then it should be continued.

Rule 1300 provides for fourth-class rates on twine and cordage, other than binding twine or cord for harvesters, and lath yarn when manufactured of hemp, jute, manila, or sisal, and also on mixed carloads of these commodities and binding twine or cord for harvesters, and rope, subject to a minimum weight of 30,000 pounds.

The proposed rule provides for fourth-class rates on twine, including binding twine, yarn, and rope, when manufactured of hemp, jute, manila, or sisal, in mixed carloads, minimum weight 30,000 pounds, with no provision for straight carload shipments, these being taken care of on the same basis by the western classification. No objections were recorded. In the interest of simplicity the revised rule may be published.

Rule 1320 is a negative rule to the effect that wire rates will not apply on check-rower wire. The carriers seek to cancel it. There is apparently no necessity for such a rule, and it should be canceled.

Rule 1500 provides that initial point weights will govern on carload shipments of bananas. Its cancellation is proposed. Respondents state that the rules circular has no application to the tariffs of the lines originating shipments of bananas. The rule may be eliminated.

Rules 1510, 1520, 1530, 1540, and 1550 are rules of various carriers prescribing varying minima to be charged on shipments loaded in new or rebuilt equipment. It is proposed to consolidate them into rule 1160 in circular 1-K, providing that freight loaded in new or rebuilt cars which can not be safely loaded to the minimum weight provided in tariffs or classifications, when making initial trips, will be subject to the minimum weights published in tariffs or classifications governing but not to exceed 40,000 pounds.

The proposed rule provides additionally that if by reason of the character, construction, or age of equipment furnished the minimum carload weight as specified in tariffs or classifications can not be loaded, the minimum weight to be charged for on shipments loaded thereon shall not exceed the safe loading capacity as determined by the operating, transportation, or inspection department. This provision merely directs attention to the rules of the mechanical or operating departments.

While the rule has a material bearing on the charges to be assessed against shippers, the principal change effected is the establishment of a uniform minimum, in excess of which charges are not to be assessed. We approve the proposed rule.

Rule 1690 makes provision for an estimated weight of 12½ pounds per gallon on molasses in wood from New Orleans and other points

in Louisiana and in Mississippi, with a cross reference to the western classification for estimated weights on shipments of molasses in tank cars. Respondents show that there is no necessity for this rule, since it does not govern any tariffs applying from the territory in question, and the tariffs themselves make due provision. The rule, being inoperative, should be eliminated.

Rule 1720 provides for an estimated weight of $8\frac{1}{2}$ pounds per gallon on mineral water in tank cars applicable only between points in the territory subject to the Illinois classification. It is shown by respondents that there is no necessity for the rule, as the same basis would apply under the Illinois classification. They seek to cancel it, and there is no objection.

Rule 1750 provides a minimum carload weight of 11,200 pounds on automobiles loaded in cars over 39 feet 6 inches, but not exceeding 41 feet 1 inch, inside dimensions, and is applicable over certain lines only. On one line it is applicable on cars 42 feet 6 inches in length, inside dimensions. Rule 1000 of circular 1-K provides the same minimum on shipments of automobiles loaded in cars over 39 feet 6 inches in length to and including 42 feet 6 inches in length, inside dimensions.

This, it will be seen, increases the length of the cars to which this weight is applicable, and is a concession. The rule may be published.

Rule 1760 provides for a minimum weight of 10,000 pounds on bananas, less than carloads, loaded in refrigerator cars, from New Orleans, La. The carriers show that tariffs covering banana shipments from New Orleans are not subject to this circular, and that this provision is without application. The rule should be eliminated.

Rule 1860 provides for scrap iron, carloads, 40,000 pounds minimum, except where higher minimum weights may be provided in tariffs in connection with commodity rates less than the classification basis.

It is proposed to cancel the rule allowing commodity rates on scrap iron to govern, or, in the absence of commodity rates, the provisions of the western classification.

Objection was expressed on the ground that this would increase the minimum to 50,000 pounds. Protestants state that they have no objection to this minimum on shipments from concentrating points, but complain that it is too high when applied to shipments into concentrating points. Scrap iron is concentrated at Sioux Falls, S. Dak., there graded and assorted and shipped out in large quantities. Protestants contend that 40,000 pounds is about as much as can be accumulated in the outlying districts for shipment at one time; that a minimum of 50,000 pounds would result in demurrage accruing, as the radius around the concentrating points is limited and there are

no storage facilities at small stations. They further state that the method of conducting this business at Sioux Falls is fully discussed in the record in *Livingston Bros. v. C., M. & St. P. Ry. Co.* It appears that the complainants in that case, who are protestants in the instant case, receive about 65 or 70 cars per annum of scrap iron at Sioux Falls, 15 or 20 of which comprise junk in which scrap iron predominates, the remaining cars consisting of straight carloads of scrap iron. Protestants further point out, however, that in many of the states there are minima as low as 30,000 pounds and 24,000 pounds, and contend that commercial necessities should not be subordinated to uniformity, which the carriers urge as a reason for the change.

To these contentions the respondents reply that shipments would have to be held a little longer to accumulate the additional 10,000 pounds; that the material is not loaded into cars until it is gathered together; and that storing is only done at concentrating points. It is further contended that it is impracticable to maintain a minimum weight of 40,000 pounds in one section and 50,000 pounds in another.

The real question is whether an increase of 10,000 pounds in the minimum in the territory in question should be allowed. Scrap iron loads as high at 70,000 or 80,000 pounds and the carriers move it at their convenience. There is no reason to believe that this business is conducted any differently at Sioux Falls than elsewhere. Upon the facts before us we find that this change should be made.

Rule 1890 provides for a carload minimum weight of 20,000 pounds on lettuce. Cancellation is proposed for the reason that the western classification provides the same basis. There is no objection. The rule may be canceled.

Rule 1960 covers sash, doors, and blinds, and provides for a minimum weight of 20,000 pounds for cars 34 feet or under in length and 24,000 pounds for cars over that length.

Under the new rule a minimum weight of 24,000 pounds will apply on all cars. This would effect an increase of 4,000 pounds on cars less than 34 feet in length. Protestants withdrew objections at the hearing. We hold that the proposed rule may be made effective.

Rule 2000 provides that in connection with commodity rates on tile roofing a minimum carload weight of 30,000 pounds shall govern. It is sought to cancel this provision, as this same minimum is also carried in the western classification and minimum weights are shown in connection with commodity rates. No objections were expressed. The cancellation may be made.

Rule 2440 provides that—

Charges directly incident to the transportation of freight, including legitimate drayage or switching charges, may be advanced to connecting railways, ship-

34 I. C. C.

pers, transportation companies, warehouses or storage houses, but only on such freight as in the estimation of the agent is worth in excess of the freight charges at forced sale.

It further provides that—

The cost, or any part thereof, of the articles shipped, must not in any case be advanced.

These rules are not applicable over certain lines.

An amendment is proposed as follows:

In case freight is of character on which prepayment or guaranty is required by tariff or classification governing, advances will be subject to the same requirement—

with a note to the effect that drayage, other than that assessed against freight transferred between carriers' stations, will not be considered as transportation charges. The amended rule is likewise applicable only on certain lines.

Respondents allege that the new rule merely elucidates the intended meaning of the old rule.

The old rule was incomplete, and as no provisions are withdrawn which should be continued the amended rule may be made effective.

Rule 2450 provides that advertising matter, printed, including signs, show cards, and pictures, not framed, with advertisements printed on face, in an aggregate not exceeding 500 pounds, may be shipped with carloads of the articles so advertised at the carload rating governing such commodities.

It is proposed to substitute the western classification rule, which provides that advertising matter described therein may be shipped with goods it advertises at the rating applying on such goods provided the advertising matter does not exceed 2 per cent of the gross weight of the goods and packing, except that when charges are assessed on the minimum carload weight the advertising matter may equal 2 per cent of such minimum. The quantity of advertising matter allowed may be used to make up the minimum.

The necessity of duplicating the rule in circular 1-K is brought about by the fact that some of the commodity tariffs applicable to western trunk line territory are not subject to the western classification. This change in some instances reduces the amount of advertising matter that can be shipped while in others it increases it, depending upon the minimum carload weight specified for the articles advertised.

No objections were recorded. The provision is a reasonable one and a step toward uniformity. The change may be made.

Rule 2470 provides that in all cases where carload shipments are loaded by shippers on private sidings or team tracks without check by a representative of the railroad company the notation "shipper's

load and count" must be entered on the bill of lading or shipper's receipt therefor. Cancellation is proposed because the same rule is carried in western classification. No objection was expressed. The rule may be canceled.

Rule 2480 provides that carload ratings will apply on shipments received in one day from one consignor under one bill of lading and delivered on one expense bill to one consignee, and further that carload ratings are not applicable on shipments consigned to railroad agents for distribution.

It is proposed to substitute the following:

CARLOAD RATINGS.

SECTION 1. Except as provided in rule 18 of western classification, carload ratings apply only when a carload of freight is shipped from one station (one loading point) in or on one car (except as provided in rule 24 of western classification) in one day by one shipper for delivery to one consignee at one destination. Only one bill of lading and one freight bill shall be issued for any such carload shipment. The minimum carload weight provided is the lowest weight on which the carload rating will apply.

SEC. 2. Carriers' agents at points of shipment must not accept freight to be carried at carload ratings for distribution to two or more parties by carriers' agents at points of destination.

SEC. 3. Agents at point of destination must deliver freight carried at carload ratings to one consignee only.

SEC. 4. If carrier's agent at destination distributes a carload shipment contrary to the foregoing, less-than-carload ratings will be applied on the entire carload.

The subject was discussed, but no important objection was entered. The carriers declare that section 1 of the proposed rule is the same as section 1 of rule 6-A of the western classification, which is a rule recommended by the Committee on Uniform Classification. They state that the present contentions were considered in connection with the suspension of western classification No. 51, and that sections 2, 3, and 4 of the rule carried in western classification 51 have been revised in accordance with suggestions there made by the Commission and consolidated in a single rule in the present classification, which reads as follows:

SEC. 2. Carload ratings will not apply on freight consigned to, or in care of, carriers' agents for the purpose of assembling, forwarding, or delivering less-than-carload shipments in order to effect the application of the carload ratings thereon. Less-than-carload ratings will be applied on the entire shipment.

A comparison of the rule now proposed with that of the current western classification shows that the remainder of the rule, approval of which is now sought, is identical with the one which was proposed in western classification 51, with respect to which the Commission

had the following to say, *Western Classification No. 51*, 25 I. C. C., 442, 479:

Sections 2 and 3 are nothing more than written directions to agents at points of origin and destination not to accept or deliver carload shipments to more than one consignee. Section 4 then provides that if they disobey these orders and deliver to more than one consignee, less-than-carload rating shall apply on the entire carload.

This punishes the shipper for the dereliction of carriers' agents. We can not approve such a rule. However, the last sentence of the rule in No. 50 should be changed to read as follows: "Less-than-carload rating will apply to the entire shipment."

What was said in the opinion above referred to applies with equal force here. We think the rule, if it is necessary to publish it in this circular, should be made to conform with the rule carried in the current western classification. When this is done, it may be published in the revised form.

Rule 2490 provides that cars handled in switching movement, loaded, are entitled to free switch movement, empty, including delivery to connecting lines; and it also applies to loaded cars handled in road movement and delivered for unloading within switching limits.

It is proposed to cancel this rule, respondents maintaining that the rule properly belongs in their switching tariffs, and in fact is provided for therein. We think the provision should be canceled, no objections having been entered.

Rule 2520 is shown for certain lines only. It provides that two or more carload consignments of freight may be placed in one car of suitable size and capacity and be billed the same as if a car were furnished for each carload consignment, subject to certain loading and billing conditions.

Respondents showed that there is no necessity for publication of a rule of this character, as there is no way to avoid according this privilege. The cancellation of the rule would effect no change in practice, and as no objections have been expressed we think it may be eliminated.

Rule 2550 provides that the expense for work performed in assembling less-than-carload shipments into carloads must be defrayed by shippers, consignees, or their agents, and that such consolidated cars of freight when tendered the carriers will be accepted only as a shipment originating at the consolidating point. The rule is restricted in its application to certain territory. It is proposed to cancel this rule because the western classification contains an appropriate general rule. The change may be made.

Rule 2560 covers delivery of shipments consigned "to shippers' order," and contains instructions to agents when necessary to make an exception thereto. It is not applicable for some lines.

Respondents view this as a terminal regulation to be included in books of instructions to agents rather than as a tariff matter and seek to cancel it. No protests were offered, and we agree with the views of respondents.

Rule 2580 is a requirement of a few lines for guaranty or prepayment of all freight charges to destination on shipments of emigrant movables or household goods described in western classification as taking class B rates. The western classification contains a general rule to the same effect. Continuation of this special rule is unnecessary and its cancellation is approved.

Rule 2590 provides that when the minimum carload weight or more of one article is shipped under one bill of lading the carload rate will apply on the entire lot although it may be less than two or more full carloads. It is applicable to all articles in the western classification except carload freight taking minima of less than 24,000 pounds, carload freight subject to rule 6-B, and to a few specified articles.

The carriers propose to publish in circular 1-K rule 24 of the western classification, the principal effect of which would be to restrict the follow-lot provisions to articles carrying a minimum weight of 30,000 pounds or greater. Respondents testified that this question was considered in *Investigation and Suspension Docket 76, supra*, wherein the revised rule of the western classification was approved. That is true, but in connection with the provision in section 2 requiring shipments to move from one loading point we referred to our determination in connection with rule 6-A, section 1, of western classification 51, that to relieve the rule of ambiguity the phrase "one loading point" should be eliminated and a specific statement added that a bill of lading must be issued from one loading point only, so that the last sentence of the rule would read: "The minimum carload weight provided is the lowest weight on which the carload rating will be computed." 25 I. C. C., 478, 494.

A comparison of the proposed rule with rule 24 of the western classification shows that it is the same except for the words "one loading point" in section 2. No objections were offered to the proposed rule at the hearing. When revised to conform to the corresponding rule now carried in the western classification the proposed rule will be permitted to take effect.

Rule 2610 provides that rates named in connection with the Missouri, Kansas & Texas Railway include equipment allowances for the use of cars, except tank cars and those owned by common carriers,

which allowances are also a matter of tariff publication by the Missouri, Kansas & Texas Railway. The rule also carries a cross reference to the western classification for mileage allowances and equalization of mileage on tank cars.

Respondents point out that there is no necessity for the publication of this rule in the rules circular and propose to cancel it. We see no reason to disapprove.

Rule 2670 makes an allowance of 1 cent per 100 pounds to any person, firm, or corporation undertaking the transfer from East St. Louis, Ill., to St. Louis, Mo., of shipments of fruits and vegetables, not dried, from points in Wisconsin, Michigan, and Minnesota destined to St. Louis proper. It is not applicable in connection with seven carriers.

Respondents explain that the rule is of no interest to consignors or consignees and that due to the numerous exceptions it is practically inoperative. No objections were recorded, and the proposed cancellation may be made.

Rule 2750 provides that shipments of flaxseed in bulk will not be accepted for transportation unless loaded in cars which have been properly lined at shipper's expense to prevent loss by leakage, and shippers are required by it to inform carriers' agents that they desire cars for the loading of flaxseed. The rule also specifies that notation over shippers' signature must be shown on the shipping order and bill of lading that shipments are loaded in bulk subject to and in compliance with the rule. When applied over certain lines, it is applicable also to millet seed, but this latter provision does not apply on local traffic within the state of Minnesota.

A new rule is proposed which is applicable in its entirety to either millet seed or flaxseed on all lines. No objections were entered. The new rule has our approval.

Rule 2780 provides that for the purpose of cleaning elevators and houses, at the close of the shipping season each year the carload rate and actual weight, subject to a minimum of 24,000 pounds, may be applied over certain lines "on one straight carload or one mixed carload of grain or grain and seeds."

This rule also provides for one carrier that on mixed carload shipments of bulk grain or seeds, where the car is bulkheaded or where the different kinds of grain and seeds are separated by a temporary partition, the highest carload rating governing on any kind of grain or seed in the car shall be applied, plus an additional charge of \$5 per car.

It is proposed to cancel this rule, the intention being to transfer it to the commodity tariffs. Protestants object to such cancellation

until the tariffs are amended. When the necessary publication is made in commodity tariffs the cancellation may be effected.

Rule 2920 provides that consignors will be required to load and consignees to unload all freight taking carload rates.

It is proposed to publish as a substitute rules 18 and 22 of the western classification. These rules are in accordance with the suggestions of the Commission as outlined in *Investigation and Suspension Docket 76, supra*. Objections raised at the hearing having been satisfactorily answered by the carriers, the substitution may be made.

Rule 3020 provides various rules relating to refining and re-consigning carload shipments of cottonseed oil, cottonseed foots, and cottonseed soap stock at Kansas City and St. Joseph, Mo., and Omaha, Nebr. Respondents state that as these rules are included in the individual publications of the lines offering these facilities, their continuance in the rules circular is not necessary. We think the cancellation may properly be made.

Rule 3270 provides, for certain lines, that when cars are loaded in excess of 10 per cent above their marked capacity the excess will be transferred to another car and will be charged for at the carload rate and at actual weight or that the contents of the car will be transferred to a car of greater capacity and charged for at actual weight. Individual operating rules of the various carriers make similar provisions, and it is proposed to drop this rule. As no change will be effected thereby, the rule may be canceled.

CONCLUSIONS.

NOTIFYING THE PUBLIC OF CHANGES.

A number of shippers were heard by the committee of the carriers respecting some of these changes, but the general public was not advised, and only those shippers appeared who were fortunate enough to learn of the proposed action. We direct attention respecting methods of classification procedure to our conclusions in *Investigation and Suspension Docket 76, supra*, as follows:

The making of a freight classification is a great public function. In the past the hearings before the classification committees have been semipublic rather than public, and in a certain sense they have been private, although in later years the tendency has been toward greater publicity. Public business can not be conducted in a private way. The failure to recognize this fact fully and to proceed in accordance with it has been largely responsible for the commotion centering about classification No. 51.

We are referring to the methods of classification committees generally up to the present time. These methods must be changed to meet the present situation. No great reform like classification reform, which touches every interest

in the country, can ever hope to be carried into effect without causing disturbances, annoyance, and opposition, and some injustice. It is therefore especially important that before a classification committee publishes new rules, descriptions, packing requirements, and ratings full public hearings shall have previously been given after sufficient notice. It is not necessary to hear *everybody*. In making a classification that would mean endless repetition and interminable controversy without ever reaching a conclusion. Rather is it important to hear *everything*. In other words, a body of experts in classification should hear and know everything and then form their conclusions. The conclusions thus formed should not be lightly set aside.

The present proceeding has most forcibly demonstrated the necessity of affording wider publicity and fuller public hearings in connection with the future development of classification. 25 I. C. C., 450, 451.

Practically all changes proposed in circular 1-K have been approved. Had these changes been advertised before adoption by the classification committee, we seriously doubt if this proceeding would have been necessary.

CHANGES SHOULD BE MADE SIMULTANEOUSLY.

The carriers eliminated many rules from the circular intending to transfer them to commodity tariffs at an early date, but had this circular not been suspended it would have taken effect long before many of the tariffs were amended. This is a situation against which the carriers should carefully guard, as the conditions which might obtain in the interim are obvious. In this instance some of the tariffs were not amended for several months after the revised circular was issued. The carriers should see to it that these changes are made simultaneously.

It is expected that carriers will revise circular 1-K in accordance with the views herein expressed. When they have made the revision, this proceeding will be dismissed.

24 I. C. C.

No. 6358.
CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted May 7, 1914. Decided July 1, 1915.

Complainant alleges that the rates on grain and flaxseed from certain points in Iowa, Minnesota, and South Dakota to Milwaukee, Wis., are unreasonable and subject that place to undue prejudice and disadvantage, and compares these rates to the rates from the same points to Minneapolis, Minn. This comparison leaves out of consideration the rates on these commodities from the territory of origin to other points to which rates are made with relation to the rates to Minneapolis and to Milwaukee. In *Chicago-Duluth Grain Rates*, 27 I. C. C., 216, and in earlier reports, the Commission has heretofore passed upon the rates on grain and the relationships that should obtain between such rates to Minneapolis and to the ports on Lakes Superior and Michigan from the territory named, and nothing herein shown is persuasive that the rates to Milwaukee or their relationships to the rates to other places should now be disturbed. Complaint dismissed.

Miller, Mack & Fairchild and *George A. Schroeder* for complainant.

E. B. Boyd for Chicago Board of Trade, intervener on behalf of complainant.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

James B. Sheean for Chicago, St. Paul, Minneapolis & Omaha Railway Company, intervener.

W. H. Bremner for Minneapolis & St. Louis Railroad Company, intervener.

Charles F. Macdonald and *G. Roy Hall* for Duluth Board of Trade, intervener on behalf of defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The matter here in issue is the relationship of the rates on grain from certain points in Iowa, Minnesota, and South Dakota to Milwaukee and to Minneapolis. It is alleged that the rates to Milwaukee are unreasonable and that Milwaukee is subjected to undue prejudice and disadvantage by reason of the rates to that place and to Minneapolis.

The complaint, as filed, prayed for the establishment of joint rates from the territory of origin named through Milwaukee, as a point of concentration and reconsignment, to the Atlantic seaboard; and named as defendants the Chicago, Milwaukee & St. Paul Railway Company, the Chicago & North Western Railway Company, and nearly 200 other carriers whose lines, in connection with those of the companies named, form through routes for the transportation of grain eastward. At the hearing complainant abandoned its request for joint rates to the seaboard and stipulated that the complaint should be dismissed with respect to all carriers whose lines extend east of Milwaukee or Chicago. The Minneapolis & St. Louis Railroad Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, both serving the territory of origin, asked leave to intervene at the hearing. The Chicago Board of Trade intervened in complainant's behalf, and the Duluth Board of Trade intervened in support of the defendants. The parties formally before us are those above named.

At the outset of the hearing there remained for consideration the allegations that the rates on grain and flaxseed from the territory named are unreasonable and subject Milwaukee to undue disadvantage. The issue narrowed as the hearing proceeded, however, to a comparison of the rates on coarse grains, particularly corn, oats, and barley, to Minneapolis and to Milwaukee. Indeed, as the case is presented in the briefs, it is further restricted to a question of the differences that should obtain between the rates from country stations in the territory of origin through Minneapolis to Milwaukee and the rates for direct transportation to Milwaukee from the same points.

As rates on grain, coarse grain, and flaxseed are related, as this relationship is not attacked, and as the record deals mainly with the rates on coarse grain, the matters here in issue may be illustrated by setting forth a few of the rates on coarse grain taken from the exhibits filed on behalf of complainant:

To Milwaukee from—	Miles.	Present rates.					Proposed rates direct.				
		Direct.		Via Minneapolis.			Rate.	Per ton-mile.	Difference in distance.	Differential.	Per ton-mile.
		Rate.	Per ton-mile.	Miles.	Rate.	Per ton-mile.					
		Cents.	Mills.		Cents.	Mills.	Cents.	Mills.	Miles.	Cents.	Mills.
Mason City, Iowa...	297	13.5	9.1	478	17	7.1	12.5	8.4	187	4.5	5
Britt, Iowa.....	328	14	8.5	491	17	6.9	12.9	7.8	163	4.1	5
Algona, Iowa.....	349	14	8	530	17	6.4	12.8	7.3	181	4.5	5
Ruthven, Iowa.....	385	15	7.5	533	17.5	6.8	12.8	7.4	148	3.7	5
Spencer, Iowa.....	397	15	7.3	520	17.5	6.9	14.4	7.3	123	2.1	5
Sheldon, Iowa.....	484	17	7.8	544	18.5	6.8	15.7	7.3	110	2.8	5

It is not necessary to extend these comparisons, for the exhibits filed by complainant show that from the territory named the rates to Milwaukee via direct routes are now generally lower than via Minneapolis. In some instances, not set forth above, where there is no great difference in the distances via the indirect and direct routes, the rates over the two routes are the same. The object of the present complaint is to obtain increased differences between the rates over the circuitous and direct routes through the subtraction from the rates to Milwaukee via Minneapolis of differentials based on mileage.

These reductions in rates to Milwaukee are asked upon the theory that the differences in distances over direct and indirect routes are sufficiently great to warrant the Commission in establishing differences in the rates via such routes based upon a reduction in the revenues to accrue to the carriers of 5 mills per ton-mile for such differences in distance; the measure of these reductions, 5 mills per ton-mile, is suggested by complainant as approximating the revenue yielded by the maximum differential in rates on grain from this same territory between Minneapolis and Duluth, 4 cents per 100 pounds, prescribed by the Commission in *Superior Commercial Club v. G. N. Ry. Co.*, 25 I. C. C., 342, and the revenue per ton-mile yielded by the proportional rate of 7.5 cents per 100 pounds in effect from Minneapolis to Milwaukee; and the resulting differentials, the complainant contends, should be deducted from the present rates to Milwaukee via Minneapolis to arrive at the proposed direct rates to Milwaukee. The complainant recognizes that many of the rates from country stations in Minnesota to Milwaukee via Minneapolis can not readily be changed, as they are made upon the intrastate rates to the latter point plus the established proportional rate on coarse grain of 7.5 cents from Minneapolis to Milwaukee and to Chicago, and therefore it accepts these and other rates via Minneapolis as yardsticks.

Although the request for joint rates via Milwaukee to the Atlantic seaboard has been abandoned, the evidence shows that Milwaukee is a primary market for the handling of grain, and that most of the grain received there ultimately goes eastward in competition with grain passing through Minneapolis and other points. The reductions asked would give Milwaukee an advantage in through rates to all eastern points not only over Minneapolis, but over Duluth and Superior, and these advantages would accrue to Chicago as well as to Milwaukee; for from the territory named the rates are maintained upon a parity to Chicago and to Milwaukee. In recent years we have investigated the rates on grain from the territory in question to Minneapolis, and to ports on Lakes Superior and Michigan, including Superior, Duluth, Milwaukee, and Chicago. The present rates to Min-

neapolis and to these ports and their relationships are in substantial accord with the conclusions heretofore reached by us. *Chicago-Duluth Grain Rates*, 27 I. C. C., 216; *Superior Commercial Club v. G. N. Ry. Co.*, 25 I. C. C., 342; *Same v. Same*, 24 I. C. C., 96; and *Investigation of Advances in Rates on Grain*, 21 I. C. C., 22.

In the *Chicago-Duluth* case we said, at pages 221 and 222:

Removal of the discrimination that was found to exist against Duluth-Superior and in favor of Milwaukee and Chicago necessitated some increases in rates to Milwaukee and Chicago, and the reduction of the differentials Duluth-Superior over Minneapolis, and over Wilmar, resulted in a great many reductions in rates. The history of these rates and the proceedings before the Commission show that there has never been an adjustment that was satisfactory to the rival markets. Duluth and Superior on the one hand, Chicago and Milwaukee on the other hand, and Minneapolis in between them, each contend that any adjustment that has existed, or that has been proposed by the carriers, either on their own initiative or under findings of the Commission, unduly prefers some or all of the competing markets. It is not at all difficult to pick out from any large and complicated rate adjustment apparent or actual inconsistencies, but in endeavoring to correct all such inconsistencies it is almost invariably found that as to some of them the correction of one creates others.

* * * * *

As has been said, the question is almost entirely one of relationship as between these rival markets. It is not a question of fixing reasonable rates *per se* from a territory of production to a single market. None of these contending parties desires a strict distance tariff, and we are convinced that substantial justice demands that the tariffs now under suspension be permitted to become effective.

It should be noted that the complainant does not ask now for a strict distance tariff or for rates to Milwaukee direct based upon a comparison of rates to Minneapolis direct. What is asked here is for rates to Milwaukee via direct routes made upon differentials based upon the differences in distance via such direct routes and via Minneapolis to Milwaukee.

The report cited above was made after an investigation and suspension of rates proposed by the carriers in substantial compliance with orders of the Commission in prior cases. Although the complainant alleges unreasonableness in the rates to Milwaukee and undue prejudice to that place because of the rates thereto as compared with the rates to Minneapolis, the relief it proposed is solely by means of differentials obtained as described above and as shown in the table. There is no other attempt to show that the rates via direct routes from country stations to Milwaukee are unreasonable and there is no other effort made to prove the extent to which the rates via the direct routes subject that place to undue disadvantage. In *Superior Commercial Club v. G. N. Ry. Co.*, 25 I. C. C., 342, 346, we said:

From points of origin from which the distance to Milwaukee is substantially greater than that to Duluth-Superior or substantially greater to Duluth-Superior than to Milwaukee, the rates should be made with due regard and proper relation to the added

distance, observing to Duluth-Superior the limitation of not to exceed 4 cents per 100 pounds above Minneapolis, and to Milwaukee the combination on Minneapolis as maxima.

The evidence before us fails to show that these requirements of the Commission have not been complied with by the carriers; indeed, it affirmatively shows that so far as the rates to Milwaukee are concerned the combination on Minneapolis has been observed as a maximum, many of the rates via direct routes being lower than that. Complainant suggests no changes in the rates to Minneapolis or to Duluth-Superior; apparently it would be satisfied if those rates were permitted to remain at the present level while the rates to Chicago-Milwaukee were reduced.

The defendants moved that the complaint be dismissed on the ground that all the matters in issue had been determined by the Commission in the cases cited above. It is not necessary at this time to repeat what we have so often said concerning the rule of *res adjudicata* in matters before the Commission. It is sufficient to note that technically the motion was well made. It remains true, however, that complainant was entitled to an opportunity to show that the rates here in issue are unreasonable and subject Milwaukee to undue prejudice and disadvantage as alleged.

Complainant filed exhibits and produced testimony tending to show the volumes of grain handled at Milwaukee and at Minneapolis during recent years. This evidence is not helpful in the present case, because it shows a constantly growing business at both markets and certainly falls far short of indicating that Milwaukee suffers from disadvantage as alleged. We deem it not essential to note the many other contentions made on behalf of complainant; all of them are directed to the support of its claim above set forth, a few seeking to show error in our former reports concerning the relationship in the grain rates to Minneapolis and to the lake ports. The complaint must be dismissed, and it will be so ordered.

No. 4981.
PACIFIC CREAMERY COMPANY
v.
SOUTHERN PACIFIC COMPANY ET AL.

No. 5422.
ARIZONA CORPORATION COMMISSION
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 7, 1914. Decided May 29, 1915.

On a rehearing of these cases involving the reasonableness of the rates on fuel oil, refined oils, and engine distillate from producing points in California, Kansas, and Texas to all points in Arizona, former opinion, 29 I. C. C., 405, modified and; *Held*, That the present rates are unreasonable and reasonable rates fixed for the future. Reparation denied.

R. Johnston for Pacific Creamery Company.

F. A. Jones for Arizona Corporation Commission.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

F. H. Wood for Southern Pacific Company; Arizona Eastern Railroad Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Texas & Pacific Railway Company.

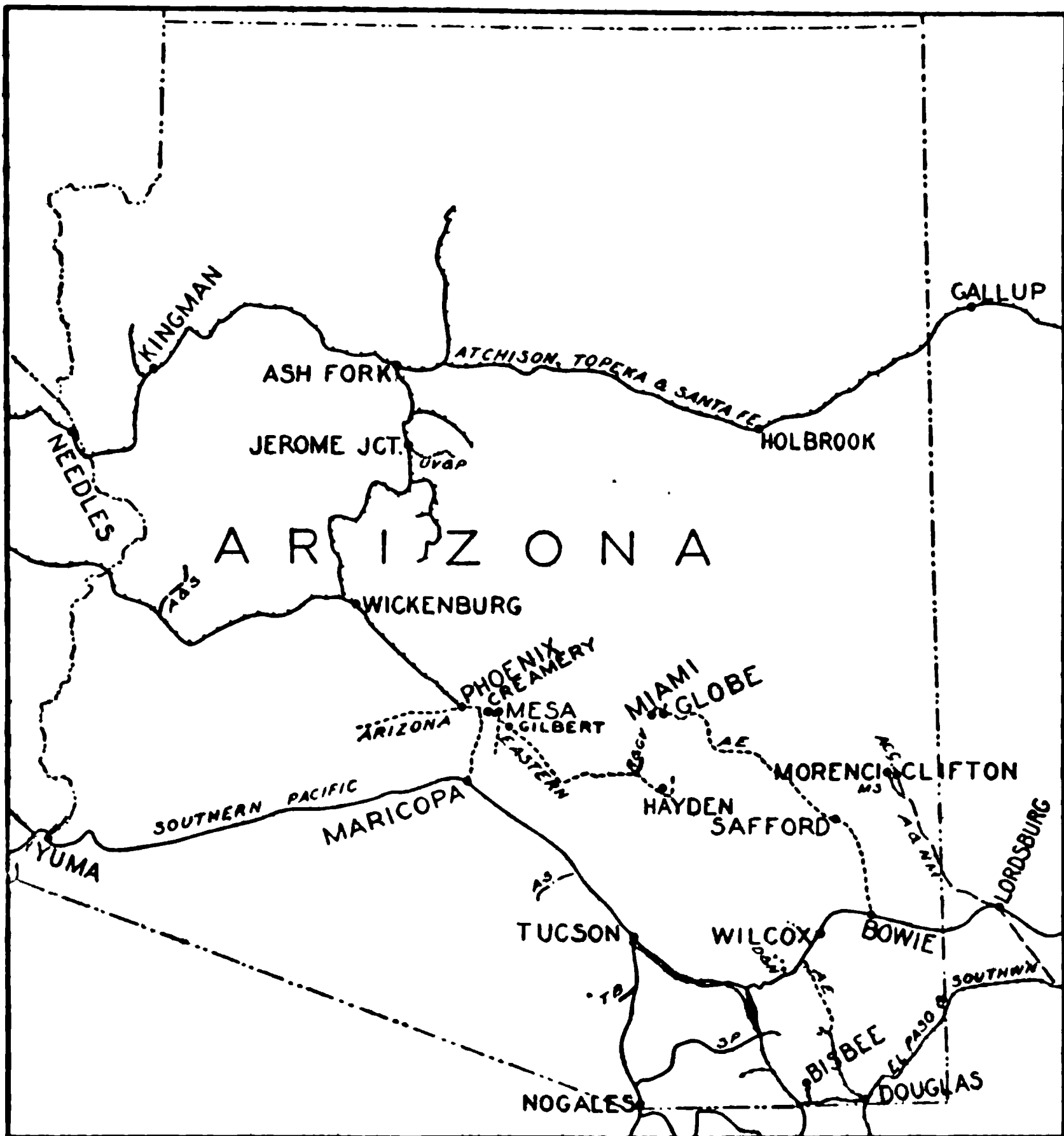
Hawkins & Franklin for El Paso & Southwestern system, Morenci Southern Railway Company, and Arizona & New Mexico Railway Company.

REPORT OF THE COMMISSION ON REHEARING.

McCHORD, *Chairman*:

The present report is on the rehearing of these cases, which were originally consolidated and heard as one case. The *Pacific Creamery case* is a specific complaint against the rates on fuel oil from California producing points to Creamery and Gilbert, Ariz. The case of the Arizona Corporation Commission is a general complaint against the rates on fuel oil and refined oil from eastern as well as western producing points to all points in Arizona. The territory affected is shown in the accompanying map.

Our previous report herein, 29 I. C. C., 405, was rendered upon an incomplete and much confused record. By petition to rehear, the carriers have explained that the unsatisfactory condition of the record on their part was due to their assumption that no extended defense in these cases was necessary because of the several previous rate adjustments that had been made. Certain points in which the Commission erred in its findings due to the deficient record were



pointed out, as was also the loss in revenue which would result from the application of the rates fixed. Our former order was set aside and a rehearing had, and because of the large amount of additional evidence now offered, these cases will be considered *de novo*.

PACIFIC CREAMERY CASE.

The Pacific Creamery Company is a corporation engaged in the manufacture of condensed milk, cheese, and butter, with plants
34 I. C. C.

located at Creamery and Gilbert, Ariz., located on the Arizona Eastern Railroad in about the geographical center of the state of Arizona. Creamery is about 10 miles east of Phoenix, Ariz., measured on the line of the Arizona Eastern, and Gilbert is about 10 miles east of Creamery.

Complaint is made of the fuel oil rates from California oil-producing points to Creamery and Gilbert, Ariz., as shown in Pacific Freight Bureau joint and proportional freight tariff No. 11-A.

From waybills filed in the record it appears that for the period from August 23, 1911, to June 20, 1913, this complainant received from Oil City, Waits, and Bakersfield, Cal., at its plant at Creamery, 50 cars of fuel oil aggregating 1,715.9 tons and paid freight charges thereon totaling \$10,571.75, or an average per car of \$211.43 at a rate per ton of \$6.16. From the record it further appears that for the period from July 3, 1913, to May 26, 1914, this complainant received 23 cars of fuel oil aggregating 1,103.33 tons, or an average of 47.95 tons per car, from Waits, Cal. With the exception of one car, which was hauled by the Atchison, Topeka & Santa Fe Railway, hereinafter referred to as the Santa Fe, all of this complainant's oil was transported by the Southern Pacific Company.

The producing points from which this oil principally moved, namely, Waits and Oil City, are in the Bakersfield district. They are on assembling lines leading into Bakersfield proper and take the Bakersfield rate plus a stated assembling charge fixed by the California Railroad Commission. The rate from Bakersfield to Creamery or Gilbert is \$6 per ton. The assembling charge from Oil City or Waits to Bakersfield is 16 cents per ton. We will confine ourselves here to a consideration of the \$6 basing rate from Bakersfield and the basing rates from other producing fields.

The distance from Bakersfield to Creamery via the Southern Pacific is 610.5 miles, while via the Santa Fe it is 501 miles. The rate via either route is the same.

The one car hauled by the Santa Fe earned per trip \$297.91. The assembling charge from Monarch, Cal., was 20 cents, so the total rate per ton was \$6.20. The \$6 rate from Bakersfield yields a per ton-mile revenue of 1.17 cents. On the 72 cars hauled by the Southern Pacific the average per car-trip revenue was \$237.07, while the rate from Bakersfield yields a per ton-mile revenue of 9.8 mills and a per car-mile revenue of 38.3 cents.

It will be observed that all of this complainant's oil moved from the Bakersfield district. The original oil field of California is that located in and around Los Angeles, which is 170 miles south of the Bakersfield district, measured by the line of the Southern Pacific.

This difference in location is directly reflected in the respective distances from the two fields to Creamery; that is, where the distance from Bakersfield to Creamery is 610.5 miles via the Southern Pacific, from Los Angeles the distance is 440.5 miles. The distance via the Santa Fe, however, is the same from both districts, namely, 501 miles.

The Southern Pacific makes a rate of \$5 per ton on fuel oil from the Los Angeles district to Yuma, Ariz., the first station on its line in Arizona, the distance being 247 miles. This \$5 rate is then applicable to all points on the main line as far as Wymola, which is 460 miles from Los Angeles. Between Yuma and Wymola is Maricopa, taking this \$5 rate, which is 412 miles from Los Angeles. Maricopa is the junction point at which shipments destined to Creamery and Gilbert leave the main line of the Southern Pacific and move over the Arizona Eastern Railroad, a subsidiary of the Southern Pacific, for a distance of 26.79 miles to Tempe. From Tempe the traffic moves over the line of the Phoenix & Eastern Railroad, another Southern Pacific subsidiary, to Creamery, a distance of 1.73 miles.

Creamery, Ariz., by reason of its close proximity to Phoenix, is naturally entitled to the effect of the competition which should result there by reason of its being served by these two systems of railway, namely, the Southern Pacific and the Santa Fe. Under the present rate structure, however, any advantage of this sort is completely neutralized. The same rate, \$6, is applicable from Bakersfield and Los Angeles alike via either the Southern Pacific or the Santa Fe.

In *Maricopa County Commercial Club v. P. & E. R. R. Co.*, 22 I. C. C., 221, and *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 428, the Commission established maximum rates on coal from Gallup, N. Mex., to points in Arizona. Gomph's tariff I. C. C. 187, effective October 20, 1914, carries rates published pursuant to the orders in these cases, and quotes the slack coal rate to Creamery as \$3.05 per ton, minimum weight marked capacity of car. From the equipment register it appears that of the coal car equipment of the Santa Fe, cars of 90,000 pounds, or 45 tons, capacity would be a fair average to use for this case. The distance from Gallup to Creamery appears to be 429.8 miles. This \$3.05 rate yields a per ton-mile revenue of 7 mills, a per car-mile revenue of 31.5 cents, and a per car-trip revenue of \$137.25.

It might be noted that the chief consumption of slack coal on the Hayden division of the Arizona & Eastern is at Hayden, where a large smelting plant is in operation. Hayden is 85 miles beyond Creamery, or 514.7 miles from Gallup, but the same rate of \$3.05 per ton is made. This rate yields a per ton-mile earning of 5.9 mills, or a per car-mile earning of 26.5 cents. Of course the per car-trip earning is the same as to Creamery.

This rate is explained by the Santa Fe as being made to meet the competition of oil and made low enough so that coal will move into this point in competition with oil from California. A larger movement of slack coal from the mines, it was considered, would enable the mines to produce more coal of the higher class, giving the Santa Fe a larger tonnage of the better grades of coal.

The Arizona & Eastern, which had to concur in this low through rate, did so because at the time it expected to load back the coal cars with lime rock for cement plants near Phoenix. There is no showing, however, that the empty movement on oil cars is any greater than that on coal cars in so far as the Santa Fe is concerned.

The complainant offers a comparison with many rates on other commodities moving into or through Arizona, from which it appears that the average per car-mile revenue for the commodities taken is 12.2 cents and the per ton-mile revenue 9.5 mills. The commodities selected embrace a wide range from the standpoint of transportation service, including automobiles, which take a high rate, as compared with sugar beets, taking a low rate; also beer and melons, taking a high rate, and necessarily moving in refrigerator equipment.

It is also shown that the Southern Pacific receives the same revenue per train-mile on 7.75 cars of fuel oil from Los Angeles to Creamery as on 24.25 cars of miscellaneous freight, and that the Santa Fe receives the same revenue on 7.38 cars of fuel oil from Bakersfield, Cal., to Phoenix, Ariz., 10 miles from Creamery, as on 22.53 cars of miscellaneous freight.

It appears that since our former report this complainant has entered into a contract with the Southern Pacific to furnish ice for the latter's Pacific Fruit Express on such a basis that if the present rate of \$6 is continued it will lose 25 cents per ton on the ice furnished. It appears that the fuel cost per ton of ice manufactured by complainant is \$1.25. It also appears that the fuel cost in the manufacture of a case of condensed milk consisting of forty-eight 40-ounce cans is approximately 1 cent.

It is contended by the defendants that because the fuel cost is such a small item in the cost of the manufacture of complainant's product, and since it appears that a reduction in the freight rate will not necessarily result in a reduction of the selling price of complainant's commodities, that the freight rate ought not to be reduced, or, in other words, that revenue should not be taken from the carriers in order to increase the profits of this complainant. It is also urged that a general reduction in the oil rates to Arizona will not result in benefit to the consumers in that state because the oil producers will simply advance the price of oil at the wells to absorb the reduction

in freight rates. The soundness of these arguments as a defense for the reasonableness of freight rates can not be conceded. If these arguments were sound, it would result that there never could be any reduction in freight rates.

If the charge assessed for a transportation service be something greater than a reasonable compensation for the services rendered, in consideration of all the circumstances surrounding the particular transportation, such excess charge is unreasonable, no matter who may benefit by reason of such reduction. The reasonableness of a transportation charge may be judged in part from a comparison with the revenue derived by the carriers involved from the transportation of other commodities under similar circumstances and conditions.

From a consideration of all the circumstances and conditions it is the opinion of the Commission, and we so find and conclude, that the \$6 rate assessed by the defendants herein on fuel oil is excessive and that for the future they shall apply rates to Creamery from Los Angeles not to exceed \$5 per ton and from Bakersfield, \$5.50 per ton. Upon reconsideration, the Commission is of opinion and so finds that the showing here made does not warrant a finding that the rates herein concerned have in the past been unreasonable. The claim for reparation must, therefore, be denied.

ARIZONA CORPORATION COMMISSION CASE.

This case is a general complaint against the rates on fuel oil, distillate, and refined oils to all points in Arizona from all producing fields east and west thereof.

FUEL OIL.

It appeared in the former record and was stated in our former opinion, 29 I. C. C., at page 407, that 96 per cent of the consumption of fuel oil in Arizona is by the mines. This statement was not disputed upon the rehearing. It now appears that these mining operations are, for the most part, located in southeastern Arizona on the lines of the Southern Pacific. The record mentions only one mining operation of any proportion as being located upon the lines of the Santa Fe. This operation is located at Jerome. It is served by a railroad owned by the same interests that own the smelter properties which connects with the Santa Fe at Jerome Junction, some 100 miles north of Phoenix.

The table on the following page shows the prevailing rate structure on fuel oil. The points used are typical points, at which there is the largest consumption of oil, as shown by the carriers' statement of actual movement for the calendar year 1913 on the Southern Pacific and for the year 1912 on the Santa Fe.

To—	From Bakersfield.		From Gates, Tex.		From Beaumont, Tex.		From Coffeyville, Kans.	
	Rate per ton.	Miles.	Rate per ton.	Miles.	Rate per ton.	Miles.	Rate per ton.	Miles.
Hayden.....	\$6.00	699	¹ \$28.20	1,025	¹ \$30.40	1,298	¹ \$28.20	1,500
Tucson.....	6.00	671	8.00	952	² 8.00 ² 9.60	1,225	¹ 24.40	1,392
Bisbee.....	6.05	786	4.60	888	5.30	1,161	7.00	1,328
Douglas.....	6.25	799	4.60	857	5.30	1,130	7.00	1,297
Globe.....	7.00	910	¹ 32.40	962	¹ 34.60	1,235	¹ 32.40	1,402
Miami.....	7.25	920	¹ 33.00	972	¹ 35.20	1,245	¹ 33.00	1,412
Clifton.....	7.00	906	6.35	858	¹ 19.00	1,131	8.54	1,298
Morenci.....	7.00	914	6.35	864	¹ 19.00	1,137	8.54	1,304
Jerome Junction.....	6.00	420	¹ 24.40	1,229	¹ 26.60	1,502	¹ 24.40	1,296
Kingman.....	5.00	372	¹ 26.60	1,382	¹ 28.80	1,655	¹ 26.60	1,343
Phoenix.....	6.00	492	¹ 24.40	1,074	¹ 26.60	1,347	¹ 24.40	1,405

¹ No commodity rates shown; fifth class applies.² Southern Pacific.³ El Paso & Southwestern.

In connection with this table it should be noted that the Southern Pacific quotes a rate of \$7 per ton on fuel oil from Bakersfield to El Paso, Tex., a distance of 983 miles, and also that the Santa Fe has a rate of \$4 to Needles, Cal., almost on the California-Arizona state line, a distance from Bakersfield of 310 miles.

It appears that for the calendar year 1913 the Southern Pacific hauled from the California fields into Arizona, to the points given in the above table principally, a total of 329,038 tons of crude oil, from which it derived a total revenue of \$2,154,006.47, or an average revenue of \$6.54 per ton. This traffic in actual movement from the point of origin equaled 267,669,487 ton-miles, or an average actual haul per ton of 813.4 miles. Figured from the district, either Bakersfield or Los Angeles, rather than from the point of origin, the average actual haul was 800.9 miles. The traffic yielded a per ton-mile revenue of 8.04 mills. The total shipments of the Pacific Creamery Company via the Southern Pacific, of 72 cars, indicate an average load of 39.3 tons per car, which would yield to the Southern Pacific on this traffic a per car-mile revenue of 31.59 cents and an average per car-trip revenue of \$256.95.

For the calendar year of 1912 the Santa Fe hauled from California fields into Arizona 56,027 tons of fuel oil, from which it derived a revenue of \$331,602.35, or an average per ton revenue of \$5.91. This traffic in actual movement equaled 28,982,161 ton-miles, or an average haul per ton of 517 miles. The traffic yielded a per ton-mile revenue of 1.14 cents. The average load per car was 39 tons, which indicates that the per car-mile revenue was 44.46 cents, yielding an average per car-trip revenue of \$229.85.

The carriers have offered numerous tables of rate comparisons showing the relation of these Arizona oil rates to oil rates in other parts of the country, but the same objections may be made to all these rates

as was made by the carriers to the rate comparisons furnished by complainants at the first hearing, which, for lack of other evidence, furnish the basis for our previous report. The transportation difficulties in the way of grades encountered on the haul from California fields are detailed in the record, and there is some general testimony to the effect that the haul from the east is not so difficult as the haul from the west.

Petroleum and its products, including fuel oil, under western classification takes regularly the fifth-class rating with a 26,000-pound, or 13-ton, minimum. The fifth-class rate from Los Angeles to Benson, Ariz., is \$1.08 per 100 pounds, or \$21.60 per ton, and this rate applies as far east as El Paso, Tex. This rate produces a per car-trip revenue of \$280.80, which, when compared with the per car-trip revenue produced by the rates under consideration, indicates their revenue qualities.

From a consideration of all the circumstances and conditions we are of opinion that the existing scale of fuel-oil rates from the California fields is unreasonable, and the following are fixed as the reasonable maximum rates for the future:

To—	From Bakersfield.		From Los Angeles.	
	Rate per ton.	Miles.	Rate per ton.	Miles.
Hayden	\$5.50	699	.....	.....
Tucson	5.50	671	.....	.....
Bisbee	5.55	786	.....	.....
Douglas	5.75	799	.....	.....
Globe	6.50	910	.....	.....
Miami	6.75	920	.....	.....
Clifton	6.50	906	.....	.....
Morenci	6.50	914	.....	.....
Jerome Junction	5.50	420	.....	.....
Kingman	4.50	372	.....	.....
Phoenix	5.50	492	\$5.00	422

Rates to points intermediate to the points specified and to any other points involved herein not so included shall be applied on a distance basis commensurate with the above scale.

The Commission is not warranted on the present record in fixing reasonable rates for the future from the eastern fields, but commodity rates should be published by the carriers from these eastern fields to the points indicated in the above table which shall bear their proper relation, scaled on a distance basis, to those commodity rates which are now quoted.

REFINED OILS.

The present rates per ton on refined oils from each of the producing districts here concerned are shown in the following table. The points taken are shown in carriers' statements of actual movement to be the points of largest consumption.

To—	From Los An- geles, Cal.	From Gates, Tex.	From Beau- mont, Tex.	From Coffey- ville, Kans.	To—	From Los An- geles, Cal.	From Gates, Tex.	From Beau- mont, Tex.	From Coffey- ville, Kans.
Yuma.....	\$10.60	\$29.60	\$31.60	\$29.60	Safford.....	\$19.00	\$28.00	\$30.20	\$28.00.
Phoenix.....	16.60	24.40	26.60	24.40	Globe.....	19.00	32.40	24.60	32.40
Mesa.....	16.60	24.40	26.60	24.40	Clifton.....	19.00	19.00	19.00	30.60
Hayden.....	21.00	28.20	30.40	28.20	Kingman.....	14.40	26.60	28.80	26.60
Tucson.....	16.60	21.00	26.60	24.40	Holbrook.....	18.00	24.40	26.60	24.40
Bisbee.....	21.60	24.40	26.60	24.40	Wickenburg.....	16.60	24.40	26.60	24.40
Willcox.....	21.60	24.40	26.60	24.40					

The Southern Pacific for the calendar year 1913 hauled into Arizona 5,980 tons of refined oils, on which its revenue was \$112,806.45, or an average per ton of \$18.86. This traffic actually moved 4,174,321 ton-miles, or an average haul per ton of 698 miles, yielding a per ton-mile revenue of 2.7 cents. From the Santa Fe's figures for 1912 it appears that the average load per car was 21.9 tons. Using this figure as a fair average for the Southern Pacific, its car-mile revenue was 59 cents, or an average per car-trip revenue of \$411.82.

The Santa Fe in 1912 hauled 4,990 tons of refined oils into Arizona, or 228 cars, but the revenue derived or the actual haul does not appear.

For the most part the movement, as above indicated, was from the Los Angeles district. As with the fuel oil, no showing is made as to the movement of refined oils, if any, from the east. It appears, however, that the eastern gasoline is more desirable than the western, because the former is freer from carbon and is better for use in internal-combustion engines.

The fifth-class rate from Los Angeles for the 698-mile average distance shown above is \$1.08, which yields a car revenue, as above indicated, of \$280.82. This car earning, reduced to the basis of per car-mile revenue on the average carload of refined oil, as shown above, of 21.9 tons, yields 40 cents, or a per ton-mile revenue of 1.8 cents. Using this per ton-mile revenue for the average distance of 698 miles, a constructed rate of \$12.76 is obtained, which yields practically the same per car revenue as results from the fifth-class rate for a similar distance. Under western classification petroleum and its products ordinarily take fifth-class rates.

From a consideration of all the circumstances and conditions, we are of the opinion that the present rates on refined oils are unreasonable and that for the future reasonable rates on refined oils will be such as yield practically the same per car revenue as is yielded by the fifth-class rate for the same distance, figured on the basis of an average car of 21.9 tons, arrived at as above. To Phoenix, where the distance via the two routes varies, the rate constructed as indicated would vary. In such instances the mean between the two rates shall apply, with a \$10 rate to Phoenix as a basis.

DISTILLATE.

Distillate is a low-grade volatile oil adapted to use in internal-combustion engines. Because of its relative lightness in weight, it finds its largest use in Arizona in connection with small mining operations and irrigation projects off the railroads where a haul by wagon is necessary. The value of distillate at the wells is about 6 cents per gallon, as compared with gasoline ranging from 15 cents to 20 cents per gallon. It loads heavier per car than gasoline, the figures of the Santa Fe showing an average load per car of 25.6 tons. The record indicates that some demand has been made by shippers for a lower rate on distillate than on gasoline and that in some instances the carriers have met this demand by publishing a rate applicable on distillate which is 80 per cent of the rate on gasoline. This relationship in the two rates appears here to be reasonable, and in publishing the rates on refined oils as above directed the carriers shall also publish rates on distillate which shall be not more than 80 per cent of the rates so established on refined oils. An order will be entered in accordance with the views expressed herein.

84 I. C. C.

SECOND INDUSTRIAL RAILWAYS CASE

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFICATION TERRITORY.

Submitted February 13, 1915. Decided July 1, 1915.

Trunk lines in official classification territory filed tariffs canceling joint rates with and allowances to all industrially owned lines; *Held:*

1. That the principles of the *Industrial Railways case*, 29 I. O. O., 212, do not apply to certain of the lines with which joint arrangements have been canceled by the tariffs here involved.
2. That some of the industrial lines here involved are distinguishable from those in the *Tap Line cases*, 234 U. S., 1, only in that the tap lines here are not located within a territory from which rates are made under a large blanket of originating points.
3. That some of the industrial lines, while maintaining the form of common carriers, are in effect performing only private transportation.
4. That some of the industrial lines, like the tap lines, should have joint rate arrangements with the trunk lines but that the basis of rates should be revised.
5. That some of the industrial lines have taken on the form of common carriage by means of leases of facilities of the trunk lines and that such an arrangement in certain cases is a device to defeat the law.
6. That some of the industrial lines are not common carriers in any sense and fall within the principles laid down in the *General Electric case*, 14 I. O. O., 237.
7. Principles expressed and limitations defined under which arrangements may be made between the trunk lines and industrial lines for the interchange of transportation.

George Stuart Patterson for Pennsylvania Railroad Company, Baltimore & Ohio Railroad Company, Erie Railroad Company, and New York Central Railroad Company.

T. H. Burgess, D. P. Connell, R. W. Barrett, William W. Collin, jr., Nathaniel W. Smith, Frank L. Littleton, Charles P. Lynde, Ernest S. Ballard, H. A. Taylor, Frederick L. Ballard, Jackson E. Reynolds, S. O. Pickens, James Stillwell, A. B. Burgwin, and N. S. Brown for various trunk lines.

Charles MacVeagh, J. H. Reed, C. A. Severance, and Charles S. Belsterling for Johnstown & Stony Creek Railroad Company and Essex Terminal Railway Company.

Samuel D. Snow, Edgar A. Bancroft, and Phillip S. Frost for Illinois Northern Railway Company; Chicago, West Pullman & Southern Railroad Company; and Owasco River Railway Company.

Gustavus S. Fernald for Pullman Railroad Company.

Thomas Gibson for Algoma Central & Hudson Bay Railroad Company.

Frank L. Crocker for Norwood & St. Lawrence Railroad Company.

Sheriff, Dent, Dobyns & Freeman for Chicago & Calumet River Railroad Company.

N. G. Moore for Chicago & Illinois Western Railroad Company.

Edwards & Angell and Littleford, James, Ballard & Frost for Moshassuck Valley Railroad Company and shippers located thereon.

Leon W. Harrington and Charles McPherson for Ludington & Northern Railway Company.

Henderson, Quail, Siddal & Morgan and C. D. Chamberlin for Lorain & Southern Railroad Company.

I. P. Blanton for New Castle & Ohio River Railway Company, Hanging Rock Iron Company, and Marting Iron & Steel Company.

Norman B. Beecher for New Jersey, Indiana & Illinois Railroad Company.

White & Case, Roberts Walker, Irving S. Olds, and Henry B. Stimson for Northampton & Bath Railroad Company.

Charles Conradis and Arthur B. Hayes for St. Louis, Troy & Eastern Railroad Company; Toledo, Angola & Western Railway Company; Tionesta Valley Railway Company; Susquehanna & New York Railroad Company; Valley Railroad Company; Kane & Elk Railroad Company; and Sheffield & Tionesta Railroad Company.

Donnelly, Lister, Brennan & Munro for Wyandotte Southern Railroad Company.

F. G. Goodell and Robert T. Gray for Wyandotte Terminal Railroad Company and Michigan Alkali Company.

F. D. Gallup for Sheffield & Tionesta Railroad Company and Valley Railroad Company.

W. E. Rice for Susquehanna & New York Railroad Company and Tionesta Valley Railway Company.

Peter E. Striker for Wharton & Northern Railroad Company.

O'Brien, Boardman & Platt, Frank H. Platt, and George W. Field for Virginia Portland Cement Company.

Henry G. Miller, John S. Burchmore, and Luther M. Walter for Calumet, Hammond & Southeastern Railroad Company and By-Products Coke Corporation.

Smith, Baker, Effler & Allen for Bay Terminal Railroad Company.

John S. Burchmore, Luther M. Walter, and Borders, Walter & Burchmore for Indiana Northern Railway Company.

Isaac Born and A. B. Cronk for Central Railroad Company of Indianapolis and American Hominy Company.

Tenney, Harding & Sherman for Chicago Short Line Railway Company.

Scott, Bancroft & Stephens and *Lester L. Falk* for Culver & Port Clinton Railroad Company.

Angell, Bodman & Turner for Delray Connecting Railroad.

E. J. Boshart for Lowville & Beaver River Railroad Company.

Ralph Crews for Port Huron Southern Railroad Company.

Irving Drew for Berlin Mills Railway and Burgess Sulphite Fibre Company.

Squire, Sanders & Dempsey and *Robert F. Denison* for Lakeside & Marblehead Railroad Company.

H. H. Ferguson for the Illinois Terminal Railroad Company.

William A. Glasgow, jr., for Chestnut Ridge Railway Company.

Adelbert Moot for Genessee & Wyoming Railroad Company.

W. P. Sidley and *Holt, Cutting & Sidley* for Manufacturers Junction Railway Company.

W. J. Vesey for Lake Erie & Fort Wayne Railroad Company.

R. W. Ropiequet for Coal Operators Traffic Bureau of St. Louis, Mo.

A. L. Herrlinger and *Herrlinger & Dickson* for Westport Stone Company and Big Four Stone Company.

Burt T. Cady, W. H. Joesting, A. W. Sherwood, William R. Moss, Albert G. Miller, John S. Burchmore, Luther M. Walter, Richard Townsend, Floyd L. Carlisle, Paul R. Clark, Nicholas M. Edwards, Edward E. Gates, Joseph Keavy, Edgar Bogardus, and B. B. Clarkson for various shippers located on industrial lines.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

Following the original report of the Commission in the *Industrial Railways case*, 29 I. C. C., 212, the trunk line carriers in official classification territory withdrew from joint rate arrangements theretofore had with the industrial roads before us in that proceeding and also with substantially all other industrially owned lines in the territory which were not involved in that proceeding. These tariffs were published to become effective April 1, 1914. Protests were received from many of the industrial lines affected and from shippers located thereon. A large number of the industrial lines made no protest against the action of the trunk lines, apparently recognizing the justness of the conclusions reached in our original report as applied to their respective situations. In some instances formal complaints were filed, alleging that through routes and joint rates covering the transportation of property between the points and places on the industrial line and points and places on or reached by way of the trunk line

connections had been in effect for many years; that traffic over the industrial line had been built up in reliance thereon; that such points on the industrial lines had been included in rate groups or districts, and that cancellation of the same would work unjust discrimination against shippers and places located upon the industrial lines and would constitute an unreasonable increase in the rates between points upon the industrial lines and points upon the lines of other railroads. The complaints prayed, among other things, that the trunk lines be required to restore the through routes and joint rates theretofore in effect and to refrain from discrimination against the complaining lines and persons and places located along said lines. These formal complaints were entered under the Commission's Docket No. 4181, which was the number given to the original proceeding in the *Industrial Railways case*, and that proceeding was consolidated with Investigation and Suspension Docket No. 414, in which latter proceeding the Commission suspended the tariffs which proposed to cancel joint rates with and allowances to 22 of the industrial lines that were not involved in the original case. The effective dates of the tariffs under suspension have been extended voluntarily by the carriers until July 15, 1915.

Each of the above-mentioned proceedings is an investigation and inquiry upon the Commission's own motion concerning the rates, rules, and practices of the trunk lines in official classification territory in connection with small lines of railway owned or controlled by industries. Testimony was heard in the consolidated proceeding concerning any of the industrial lines which asked, in whatever form, that its case be considered by the Commission. Altogether, there are 47 industrial roads involved in the present proceeding.

In order that the Commission might have before it all the facts concerning the history, operation, and practices of each of the lines involved, its circular of questions was forwarded to each of the industrial lines, and the answers have been made a part of the record herein. As a result of such answers, supplemented by testimony given at the hearings, the Commission has before it a full statement of the facts as to each of the lines involved. The information developed from the questions is as follows: Name and location of industrial line; its list of stockholders; complete statement of the history, ownership, and control of the industrial line; its issues of capital obligations, if any, and the ownership thereof; a list of all of the industries located on the rails of the industrial line and the character of the business which each conducts; the aggregate length of tracks operated divided into main tracks and sidetracks and also as between length of track owned and track leased; a statement of the equipment operated; the length of haul between each trunk line interchange and each industry served; a map of the line; statement

of the character of the service rendered and the compensation therefor; statements of the tariffs filed and the methods employed in way-billing freight, together with other transportation records kept; a statement of the passenger service, if any; the physical condition of the tracks; statements of general balance sheet, income account, and profit and loss account for the year ended June 30, 1913; analysis of traffic and revenues for the same year; analysis of the operating expenses; a statement of the extent to which officers of the industrial lines are identified with the controlling industrial company, and to what extent passes are interchanged with the trunk line connections; a statement of the aggregate length of tracks located outside of the plant inclosure of the controlling industry; and other facts pertinent to the general questions involved in this case.

Because of the varying nature of the operations of the industrial lines and because each of them must be treated on the particular facts pertaining to it, it is proper that we point out the principles and decisions which must guide those desiring to enter into joint rate arrangements and the limitations within which such arrangements may be made. There must be determined with respect to each of the lines, first, whether the instrumentality performing the service is a bona fide common carrier; second, whether the service which it performs between the point of interchange with the trunk line and point of placement on the line of the industrial road is plant service or public transportation; third, whether a charge should be made for such service in addition to the line-haul rate applicable to or from points on the rails of the trunk line at the junction. With these questions there is to be considered the larger economic problem whether part of the money paid to the trunk line carriers for public transportation service is to be used to defray the expense of particular shippers in conveying their traffic to and from the terminals of the trunk line carriers. The *Industrial Railways case* rests largely upon the principle of placing the cost of service where it properly belongs. In approaching the question whether the common carrier status of an industrial line is bona fide it must be borne in mind that there are interests of the industry beyond the mere question of rates in maintaining such a status. The recognition of such lines as common carriers in the association of railroads through which the interchange of cars is provided inures to the very great advantage of the controlling industry served by such a line in the way of remission of charges for the detention of cars. In our original report on the *Industrial Railways case* this matter was fully discussed, and it is unnecessary to revert to it further here.

In *A., T. & S. F. Ry. Co. v. Kansas City Stock Yards Co.*, 33 I. C. C., 92, we said:

The principal test of common carriage is whether there is a bona fide holding out coupled with the ability to carry for hire.

Many of the lines on this record own no cars of their own and in some instances no locomotives, and maintain no stations other than loading and unloading docks within the plant. Their tracks lie wholly on the land of the industry which they serve, and access to them may be obtained only through the permission of the controlling industry. In such circumstances the holding out is not genuine. The public can not avail itself of such a line. Because of the location of many of them it is impossible to serve the public. In other cases there is no public to serve.

If the service in any instance is a plant service the trunk line carriers can not lawfully compensate the shipper itself, or indirectly through its incorporated plant railroad, for the use of its plant tracks or for switching the shipper's cars over them with its own motive power. *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C., 246; *Crane Iron Works v. C. R. R. Co. of N. J.*, 17 I. C. C., 514, confirmed in *Crane Iron Works v. U. S.*, 209 Fed., 238; *Cancellation of Joint Rates in Connection with C., Z. & G. R. R. Co.*, 27 I. C. C., 353. On the other hand, *A., T. & S. F. Ry. Co. v. Kansas City Stock Yards*, *supra*:

* * * If the service is public transportation defendant may be compensated, even though it be not a common carrier. Railroads are not required to own all of the instrumentalities required for the performance of the service which they are bound or undertake to perform. They may also lease or hire suitable facilities or discharge a part of their duties through agents and without restriction as to the public or private status of such agents or of the owners of the instrumentalities procured. The only restriction is that contained in section 15 of the act to the effect that allowances to shippers for furnishing transportation or instrumentalities thereof shall be supervised by the Commission. *Tap Line cases*, 234 U. S., 1; *United States v. B. & O. R. R. Co.*, 231 U. S., 274; *I. C. C. v. Dittenbaugh*, 222 U. S., 42; *I. C. C. v. Stickney*, 215 U. S., 98.

It must be borne in mind that the trunk line carriers here propose to decline to render without extra charge the additional service they have previously voluntarily performed without making any charge in excess of the rate applicable to the locality on their own rails. In that respect this case is before us for determination in much the same way as was the *General Electric case*, *supra*. There the General Electric Company attempted to compel the trunk line carriers to pay it for its service in switching cars from a reasonable interchange track to points of placement on its own system of tracks within its plant inclosure. In that case we held that we had no power under the act to compel a carrier to absorb the charges of the industry for this private service.

Similarly we held in *Manufacturers Railway Co. v. St. L., I. M. & S.*, 28 I. C. C., 93, and *Car-Ferry Allowance at Cheboygan, Mich.*, 32 I. C. C., 578, that in the absence of discrimination we had

no power to compel a carrier to absorb the charges for switching or other movement beyond its own rails. If we had the power to compel carriers to extend their rails and their service to the plants of shippers located off the established lines of railroad, there would be less difficulty in this and similar situations. Formerly the carriers could extend their rails to the mines, plants, and industries of such shippers as they chose, and the shipper *persona non grata* to the officers of the carriers was compelled to get his shipments to and from the public terminals as best he might by dray or otherwise. In many instances shippers whose business was of sufficient size to warrant the expense built spur tracks from their plants to a connection with the trunk line. Others were located so far from the trunk line that it was necessary to form a common-carrier organization in order to condemn a right of way to reach the trunk line rails. Carriers continued to afford the service to such shippers as they chose at the locality basis of rates; in other cases they declined to permit a connection with their tracks even after the industrial spur track had been built. By the amended act carriers may be compelled to make connection with spur tracks built by shippers or with lateral lines of railroad and to operate such switch tracks at a reasonable compensation therefor.

If the question here presented were new, if the power were given us under the act to fix the rates in the first instance, or if we had the power to compel carriers to extend their rails to the plants and industries of shippers, the problem would be stripped of many of its present difficulties; but we have before us a rate structure made by the carriers under which they have extended their rates to the plants of some shippers and not to others. It is the contention of the industrial line shippers that the rate structure as made for many years has extended the line-haul rates to points of placement on spur tracks and that those rates include the operation over such spurs. They say that the carriers have by custom changed the rule of the common law and have accepted the burden of making deliveries off their rights of way. Unquestionably if we were forming a new rate structure the logical way would be to make a line-haul rate and to fix a separate terminal charge based upon the amount of service performed for each shipper. Even in the present state of the rate structure there must be a point beyond which an additional charge over the line-haul rate can be justified if additional service is in fact rendered. Concerning this view the Supreme Court said in the *Los Angeles Switching case*, 234 U. S., 294:

Nor do we understand that the Commission ruled that the receipt and delivery of goods at plants located upon spur or side tracks could not in any circumstances be regarded as a distinct service for which separate compensation might be demanded. Cases of an interior movement of plant traffic to and from various parts of the estab-

lishment and of deliveries through a system of interior switching tracks constructed as plant facilities were expressly distinguished by the Commission (18 I. C. C., pp. 313, 314); and it is apparent that the ruling of the Commission would not apply in any case where by reason of the location and extent of the spur tracks and the character of the movement the facts were essentially different from those upon which the decision was based. *Interstate Commerce Commission v. Stickney*, 215 U. S., 98, 105.

An investigation made in 1910 by the Commission shows that there were at that time 742 industries in official classification territory which performed their own switching, either with power owned by the industry or through an incorporated railroad owned or controlled by the industry. Of this number 594 performed the service without any compensation therefor, while only 148 were paid allowances or divisions by the trunk line. During the intervening years nearly all of such allowances and divisions have been canceled by the tariffs before us here. There remain some industrial lines with which joint rates are continued, while to others they are denied under similar circumstances.

The trunk lines in attempting to apply the principles laid down in the *Industrial Railways case*, as indicated by the tariffs here, have not done so accurately nor altogether consistently. We have before us at least one case in which the trunk lines have withdrawn the joint rates on the traffic of independent shippers while continuing them on the junction point basis applied to the traffic of the controlling industry. The decision of the Supreme Court in the *Tap Line cases*, *supra*, and our supplemental report in the *Industrial Railways case*, 32 I. C. C., 129, throw additional light upon the situation. In the supplemental report in the *Industrial Railways case*, *supra*, we modified the findings of the original report so as to permit the trunk lines to arrange, by agreement with such of the industrial lines as are common carriers under the test applied by the Supreme Court in the *Tap Line cases* and which perform a service of transportation, for a reasonable compensation for such service in the form of switching charges or divisions of joint through rates.

We shall follow the same course in this case and shall require that each line which becomes a party to such an arrangement file with us immediately upon the consummation thereof a full statement of the arrangement entered into, showing specifically the basis of rates to be applied from points on the industrial lines and the basis of the allowances or divisions thereof granted under the agreement. Such arrangements are not to be made indiscriminately. The basis of rates to be applied and the divisions or allowances of joint rates thus made are to be arranged in conformity with the suggestions of this report. In order to hold the whole situation as nearly as may be in *statu quo*, pending such arrangements, the tariffs under suspension in Investigation and Suspension Docket No. 414 should be withdrawn.

While each of the operations is to be treated in accordance with the particular facts relating to it, the lines fall into more or less well-defined groups and as to each such group the considerations will be indicated which should govern the making of joint rate arrangements.

The first group of the lines herein involved has a very general merchandise and commodity traffic aside from the traffic of the controlling industries. They are of the trunk line type and perform hauls ranging from 11 to 380 miles. These roads are as follows:

	Mileage.
1. Algoma Central & Hudson Bay Ry.....	380
2. Essex Terminal Ry.....	15
3. Chicago & Illinois Western R. R.....	14. 23
4. Norwood & St. Lawrence R. R.....	19. 52
5. Illinois Terminal R. R.....	42. 04
6. Lowville & Beaver River R. R.....	13. 63
7. Ludington & Northern Ry.....	15
8. Kane & Elk R. R.....	15
9. Toledo, Angola & Western Ry.....	11. 34
10. Wharton & Northern R. R.....	22. 47
11. Susquehanna & New York R. R.....	103. 06

In view of the conclusions reached upon the whole record it will not be necessary to discuss in detail the characteristics of these lines. In some instances the joint rates are made by adding the local rate of the industrially owned line to the rate applicable from the trunk line junction. In other cases the junction point rate is extended back to points on the line herein involved, but when the junction rate is applied from points on the industrial line the rate structure in the general territory is based on a blanket system or, at least, a number of points of origin or destination are grouped together. As to these lines, there is no question involved which is within the purview of our jurisdiction. The divisions of the joint rates are a matter of bargaining between the interested carriers. It may be that some of these lines are operating in violation of the commodities clause of section 1 of the act, but proceedings under that clause of the law are under the jurisdiction of the Department of Justice.

In the second group of lines are those extending from lumber mills to junctions of the trunk line carriers. The ownership or control of these lines is vested in the lumber companies which they serve, and in all respects they fall within the principles laid down by the Supreme Court in the *Tap Line cases*, *supra*, except that in that case the tap lines were all located within the producing territory from which the carriers applied a blanket rate to all important markets; whereas it appears here that no large blanket exists and rates on lumber are graded with some regard to distance. On short-haul traffic to many markets in this territory some recognition is given to the two-line hauls involved from points on the tap lines. These principles of rate

making should be fully considered by the trunk lines when reestablishing joint rates with the lines here. The principles followed in settling the divisions under our second supplemental report in the *Tap Line case*, 31 I. C. C., 490, should be considered in fixing the divisions with these lines.

The third group of lines includes those the physical operations of which are in all respects similar to those recited in several cases: *General Electric Co. v. N. Y. C. & H. R. R. Co.*, *supra*; *Solvay Process Co. v. D., L. & W. R. R. Co.*, *supra*; *Crane Iron Works v. C. R. R. Co. of N. J.*, *supra*; *Alan Wood Iron & Steel Co. v. P. R. R. Co.*, 22 I. C. C., 540. The only essential difference is that the lines here included have been incorporated and hold themselves to be common carriers. In most instances the incorporated industrial line was first constructed as a system of plant tracks and in many instances the tracks are still owned by the industry and leased to the incorporated railroad. Usually the plant is located contiguous to the rails of a trunk line. In all of these instances there should be considered very carefully the test applied by the Supreme Court in the *Tap Line cases*, *supra*, regarding the bona fide character of the common carrier:

It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business, which is the real criterion determinative of its character.

If a railroad within this group is a common carrier and access to its rails may be had by the public, there is also to be considered whether such a line should be sustained by the shippers it serves or whether the expense of maintenance, operation, and interest on the money invested are to be paid by that part of the public which receives no public service or public use from it. In other words, it may well be that there should be a charge in addition to the line-haul rate for the service upon the tracks of some of the industrial lines within this group.

The fourth group of lines resembles closely the lumber tap lines with the important exception that they haul commodities other than lumber, and thus in some instances fall under the direct inhibition of the commodities clause. As appeared in the *Tap Line case*, so also here, the history of these lines shows instances in which a system of plant tracks was constructed to serve an industry located immediately contiguous to trunk line rails; because of various considerations, including a desire for an adequate car supply and a development of competition which could be used as a weapon to obtain divisions of the joint rate for the industrial line, the plant tracks were incorporated and connected with another trunk line located at a distance from the plant. The industrial line having thus developed a line haul and the

trunk line not contiguous to the plant being desirous of getting the traffic of the plant, it afforded divisions of the locality rate to the industrial line, and thus extended its facilities to the plant. Under such conditions the trunk line which had formerly served the plant lost the traffic or in order to retain it afforded the same division as did the line at a distance from the plant. The remuneration paid by the distant trunk line may not have been excessive for the service performed by the industrial line, but as applied to the short distance movement of cars to and from the contiguous trunk line the same measure of remuneration gave to the industrial line earnings which amounted to substantial returns on the investment not only in the tracks and facilities outside of the plant, but also in the purely plant tracks and sometimes paid for a substantial part of the purely industrial operations. Surely in such instances it can not be said that the rate structure had previously included the service on the plant tracks. A situation somewhat similar was before the Commission in *Blakeley Southern R. R. Co. v. A. C. L. R. R. Co.*, 26 I. C. C., 344, wherein there was pointed out the waste of transportation involved in movements to the more distant trunk line. It would seem that the proper method to pursue in making the rates to such plants would be to add to the junction point rate for the service extended to the plant from the more distant line and cancel joint arrangements with the contiguous line. The industrial road should not receive from the more distant trunk line connection any compensation as division or allowance which exceeds the amount added to the junction point rate. Thus would be preserved the earlier rate adjustment, the relation between the rates applicable over the competing trunk lines would be equalized, the revenues of the trunk lines would be conserved, and the general rate-paying public would not be burdened with allowances and special services for particular shippers.

In this group instances also appear wherein the industrial line is a bona fide common carrier and joint rates have been properly made with it, but it is in the manner in which the joint rates are constructed that discrimination appears. For example, in one instance a plant was located adjoining the rails of the trunk line. For reasons of industrial economy it had a system of plant tracks and performed the switching thereon with its own power without compensation from the trunk line. The topography of the country was such that the plant could not be enlarged at the particular point where it had been located and it was necessary to move farther up the valley to find space for a new and larger development. Between the original plant and the new plant there was located an independently owned common-carrier railroad. Joint rates had been made with this independent line on the basis of the combination of local rates to and from the

junction point. When the new plant was built the independent line was acquired by the industry. The joint rates on traffic of independent shippers were continued in the same manner and measure as theretofore; but, at that time, there were published joint rates applicable to the traffic of the controlling industry on the basis of the junction point rate, giving divisions out of it to the industrially owned line. It is by measures such as these that the trunk lines have unnecessarily depleted their revenues. There can be no justification for giving a division out of the junction point rate on the traffic of the controlling industry while making rates to the independent shippers on the basis of the combination of local rates over the junction.

In a fifth group the following conditions are shown: An industry has plant tracks which could under no conceivable conditions be considered as having any common-carrier characteristics. In order to give to them such a status, a railroad is incorporated, the tracks of the plant are leased to it, and the trunk line grants trackage rights and even leases its rails to the industrially owned railroad corporation. Thereupon the industrial railroad publishes tariffs, files them with this Commission, makes reports, and as a matter of form assumes the appearance of a common carrier subject to the act, and the trunk line affords it divisions out of the rate applicable to the locality for the same service which the industry has previously performed without compensation. The shipper through its incorporated railroad is thus afforded advantages which are denied to other shippers having a smaller volume of traffic. For a trunk line carrier to offer its facilities by lease or trackage rights, to give an undue advantage to a single shipper, is unquestionably such a device as is condemned by the act.

The history of one of these lines develops that it has had an ephemeral existence. For a time it held itself out as an interstate common carrier. When embarrassments occurred from accepting the obligations of such a status, it withdrew its reports and tariffs from our files and asserted that it was not within the jurisdiction of this Commission. When circumstances made it appear that it would be of advantage to accept again the obligations of an interstate carrier and receive the benefits from that status, it again filed its tariffs and reports and submitted itself to our jurisdiction.

The sixth group is composed of industrial plant tracks which are neither owned nor operated by common carriers and are not dedicated to public use, the ownership and right of use being in the controlling industries which operate them. They ask that allowances be paid them out of the locality basis of rates under section 15 of the act, upon the theory that they are performing a service of transportation which the trunk line is obligated to perform under the rate

structure. This question was considered in the *General Electric Co.* and *Solvay Process Co. cases, supra*, and it is not necessary to enlarge upon it here. These cases illustrate the passing of the necessity for that provision of section 15 under which shippers may be compensated by the trunk lines for their facilities used in the handling of their own shipments. This legislative measure was enacted to give this Commission a means of eliminating certain unjust discriminations. The gradual elimination of discriminatory practices by other processes leaves this provision of the law to be used as a cloak for various payments which but for it would be looked upon as rebates.

The Commission will look to the trunk lines to reform their tariffs and file with this Commission whatever arrangements they may make with the industrial lines here in question in the light of this report. An order will be entered directing the trunk lines to cancel the tariffs suspended in Investigation and Suspension Docket No. 414.

The formal complaints filed in these proceedings raise no issue with respect to any particular rate or rates. They attack, in effect, the principles applied by the carriers in the cancellation of their arrangements with industrial lines. Carriers against which these complaints were filed will be expected to follow the same lines of action herein suggested for the carriers whose tariffs were suspended in this proceeding. We shall therefore enter an order dismissing the proceedings in Docket No. 4181 without prejudice.

COMMISSIONER HARLAN dissents from the conclusions of the Commission in this proceeding, and will later file a separate report.

34 L. C. C.

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INVESTIGATION AND SUSPENSION DOCKET No. 435.
CAR SPOTTING CHARGES.

Submitted April 23, 1915. Decided July 6, 1915.

1. Tariffs proposing a "spotting charge" for placing cars for loading or unloading at convenient points on the tracks of industries specifically named in the tariffs found not to be justified for the reason that the proposed charge would apply in many cases to services covered by the line-haul rate, and also for the further reason that to impose the additional charge upon the industries named in the proposed tariffs and not upon other industries for which like services are performed would result in unjust discrimination.
2. The line-haul rate covers the customary movement of cars over industry tracks incident to the receipt and delivery of carload freight at convenient points on those tracks for loading or unloading without regard to the size or complexity of the industry, and the points at which the cars are to be placed by the carrier for that purpose without additional charge are to be determined by general usage.
3. The line-haul rate covers only one placement of a car upon an industry track for loading or unloading, and an additional charge should be made for each additional placement of a car for that purpose, as also for the movement of cars from place to place within the plant during the processes of manufacture.

James Stillwell for Pennsylvania lines.

William W. Collin, jr., and *Ernest S. Ballard* for New York Central lines.

R. L. Burnap for Grand Trunk Railway system.

A. P. Burgoin for Pennsylvania lines west of Pittsburgh; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

Edward Barton and *O. S. Lewis* for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company and its receivers.

Henry C. Starr, W. S. Bronson, and *W. F. Fitzgerald* for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana and receivers thereof.

T. H. Burgess and *W. S. Bronson* for Erie Railroad Company.

W. K. Steele and *J. H. Dunlevy* for Pennsylvania Railroad Company.

George Stuart Patterson for Pennsylvania lines east.

C. A. de Gersdorff for Baltimore & Ohio Railroad Company and Staten Island Rapid Transit Railroad Company.

Charles H. Blatchford for Maine Central Railroad Company and Portland Terminal Company.

Henry J. Hart for New York, New Haven & Hartford Railroad Company.

T. J. Walters and *Archibald Fries* for Baltimore & Ohio Railroad Company.

Luther M. Walter, *John S. Burchmore*, and *Joseph Keavy* for National Industrial Traffic League.

H. G. Wilson for Traffic Bureau of the Toledo Commerce Club and National Industrial Traffic League.

Cassoday, *Butler*, *Lamb & Foster*, *C. R. Hillyer*, and *George E. Farrand* for Citrus Protective League and California Fruit Growers Exchange.

George Patterson Boyle for Indian Refining Company.

M. F. Gallagher for Chicago Coal Merchants Association.

A. C. Morrison for Compressed Gas Association.

Hal H. Smith for Michigan Manufacturers Association and Committee of Manufacturers and Shippers of Michigan.

H. Thompson for Union Carbide Company, Electro Metallurgical Company, Linde Air Products Company, and Oxweld Acetylene Company.

T. A. Gantt for Corn Products Refining Company.

Isaac Born and *A. B. Cronk* for American Hominy Company, Alton Box Board & Paper Company, and Central Railroad Company of Indianapolis.

L. J. Daubeck for Lehigh Portland Cement Company.

D. F. Hurd for Cleveland Chamber of Commerce.

W. J. Tomkins for Independent Salt Manufacturers and Ohio Match Company.

John M. Glenn for Illinois Manufacturers Association.

E. G. Loser for Albert Dickinson Company.

Frank Van Slyck for Globe Soap Company.

Ernest L. Ewing for Grand Rapids Plaster Company, Macey Company, and Grand Rapids Association of Commerce.

Colin Fyffe for Illinois Manufacturers Association, Alton Board of Trade, and Illinois Glass Company.

Ernest L. Ewing and *C. S. Bather* for National Federation of Furniture and Fixture Manufacturers.

Leon W. Harrington for Wallin Leather Company and Michigan Farming and Extract Company.

Francis B. James, *J. G. Barbour*, and *James A. Barlow* for National Paving Brick Manufacturers Association.

C. S. Bather for Rockford Manufacturers and Shippers Association.

A. B. Ewer for Harbison Walker Refractories Company and National Refractories Association.

J. Keavy for Indianapolis Chamber of Commerce.

Frank E. Williamson for Buffalo Chamber of Commerce and Buffalo Lumber Exchange.

W. E. Long for Sterling Manufacturers and Shippers Association.

Oscar F. Bell for Crane Company.

H. Mueller for Michigan Paper Mills Traffic Association.

W. R. Brown and *E. W. Skipsworth* for Sulzberger & Sons Company.

H. C. Barlow for Chicago Association of Commerce.

P. M. Hanson for East Side Manufacturers Association and East St. Louis Commercial Club.

Arthur T. Waterfall for Detroit Board of Commerce.

Arthur W. Brady and *Rollin Warner* for Muncie & Western Railroad Company, Ball Brothers Glass Manufacturing Company, and Gill Brothers Clay Pot Works.

H. B. F. MacFarland for Ball Brothers Glass Manufacturing Company and Gill Brothers Clay Pot Company.

C. D. Chamberlain for National Petroleum Association, National Refining Company, Canfield Oil Company, F. G. Clark Company, and Great Western Oil Company.

Charles MacVeagh, *J. H. Reed*, *C. A. Severance*, and *Charles S. Belsterling* for American Bridge Company, Carnegie Steel Company, American Sheet & Tin Plate Company, American Steel & Wire Company, and National Tube Company.

Kline, Clevenger, Zuss & Holliday and *W. A. Wareing* for Standard Oil Company of Ohio.

W. E. MacEwen for National Refining Company.

J. G. Young for Kilbourne & Jacobs Manufacturing Company.

M. L. Hopkins for Union Rolling Mill Company.

A. G. Young, *H. H. Smith*, *J. L. Neely*, and *George W. Bennett* for American Sheet & Tin Plate Company.

J. O. Coakley and *C. L. Cordes* for American Steel & Wire Company.

A. J. Earn for Kelley Island Lime & Transport Company.

J. M. Cummings for Cleveland B. Supply Company.

W. M. Cameron for Cuyahoga Builders Supply Company.

R. B. Robinson for United Steel Company.

W. T. Cashman for Grasselli Chemical Company.

C. S. Rodway for Empire Rolling Mill Company.

C. E. Corbett for Variety Iron & Steel Works Company.

F. S. Miller for Burger Manufacturing Company.

John W. H. Crim for Palmer Lime & Cement Company.

William A. Glasgow, jr., for Board of Trade of Philadelphia, Chamber of Commerce of Philadelphia, De Frain Sand Company, Charles Warner Company, Jessup & Moon Paper Company, Harlan & Hollingsworth Company, Lea Milling Company, Wilmington Malleable Iron Company, Joseph Bancroft & Sons Company, Knickerbocker Lime Company, and others.

W. H. Chandler for Boston Chamber of Commerce.

Chester O. Swain for Standard Oil Company of New Jersey.

H. Duane Bruce for Solvay Process Company and Semet Solvay Company.

W. F. Morris, jr., for Crucible Steel Company of America and Pittsburgh Crucible Steel Company.

H. Blinn and *Edward Schmidt* for Long Island Coal & Building Material Dealers Association.

Lewis D. Collins for Johnston Harvester Company and Batavia & New York Woodworking Company.

Richmond D. Moot for General Electric Company.

Howard F. Landen for Barnum Richardson Company.

W. J. Hall for American Locomotive Company.

James C. Lincoln for Merchants Association of New York.

A. R. Kennedy for Pittsburgh Steel Company.

J. M. Belleville for Pittsburgh Plate Glass Company.

C. R. MacCarey for Milliken Brothers, Incorporated.

Russell C. Jones for Industrial Traffic Association and McCullough Iron Company.

J. W. Bomgardner for John A. Roebling Sons Company.

H. W. Richards for American Radiator Company.

G. M. Freer for Cincinnati Chamber of Commerce and Ohio Shippers Association.

J. S. Marvin for National Automobile Chamber of Commerce, Incorporated.

N. B. Kelly for Philadelphia Chamber of Commerce.

E. Southwick for Providence Chamber of Commerce.

W. A. Clark for New England Coal Dealers Association.

J. F. Atwater for American Hardware Corporation.

L. E. Wilcox for International Silver Company and Meriden Chamber of Commerce.

Horace P. Tobey for Tremont Nail Company.

S. O. Edwards, *Robert B. Dresser*, and *Francis B. James* for Lonsdale Bakery, Glenlyon Dye Works, Sayles Bleacheries, O'Brien Construction Company, Lorraine Manufacturing Company, L. B. Darling Fertilizer Company, and Moshassuck Valley Railroad Company.

George H. Stevenson for General Chemical Company.

George F. Hichborn for United States Rubber Company.

Green & Bennett for Farr Alpaca Company.

William F. Garcelon for Arkwright Club.

Albert S. Bard for United States Finishing Company.

John S. Thompson for Garfield & Proctor Coal Company.

G. L. Graham for American Woolen Company and National Association of Wool Manufacturers.

George O. Wilson and *F. W. Ogden* for Jones & Laughlin Steel Company.

Richard Jones, jr., for Republic Iron & Steel Company, Youngstown Sheet & Tube Company, Brier Hill Steel Company, Youngstown Iron & Steel Company, Ohio Iron & Steel Company, Andres & Hitchcock Iron Company, Struthers Furnace Company, Sharpsville Furnace Company, Sharon Steel Hoop Company, Stewart Iron Company, Limited, Shenango Furnace Company, DeForest Sheet & Tinsplate Company, Girard Iron Company, Valley Mould & Iron Company, and Trumbull Steel Company.

William Padden for United Engineering & Foundry Company.

C. G. Burson for Grain and Hay Exchange of Pittsburgh.

T. J. Gillespie for Lockhart Iron & Steel Company.

E. W. Pittman and *Thomas L. Cannon* for McClintic-Marshall Construction Company.

R. D. D. Hollowell for American Face Brick Association.

H. E. Graham for Penna Malleable Company and Central Car Wheel Company.

John F. Lent for Fort Pitt Bridge Company.

E. C. Sattley for Page Woven Wire Fence Company.

E. T. Sutler for Trumbull Steel Company.

Harry F. Denig for Pittsburgh Chamber of Commerce.

B. C. Follansbee for Follansbee Brothers Company.

M. L. Ebaugh for Orenstein-Arthur Koppil Company.

Ray Himrod for Manufacturers Association of Erie.

F. G. Russell for Landers, Frary & Clark.

Robert W. Potect for Stanley Works.

William P. Libby for Plymouth Cordage Company and New England Industries Demurrage Committee.

Francis B. James and *E. E. Williamson* for Lukenheimer Company, Moshassuck Valley Railroad Company, and various shippers.

W. F. Clarke for B. F. Sturtevant Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding involves the propriety and reasonableness of a proposed charge for placing cars upon industry spurs or private sid-

ings, or upon the tracks of industrial plants, at convenient points for loading and unloading, and for the movement incident thereto over the track or tracks of the industry. This charge, which is called a spotting charge, is proposed by the principal railroads in central freight association and trunk line territories and the New York, New Haven & Hartford Railroad in New England, by their individual tariffs filed with the Commission to become effective at different dates from April 20, 1914, to July 15, 1914, inclusive. The effective dates of the tariffs which were filed to become effective prior to July 1, 1914, were postponed to that date by the voluntary act of the carriers, and upon protests from many classes of shippers all the tariffs were subsequently suspended by the Commission. The respondents announce in the suspended tariffs that they were filed to comply with a suggestion of the Commission in the *Industrial Railways case*, 29 I. C. C., 212. The proposed spotting charge is 5½ cents per ton, minimum \$2 per car, and the service for which the charge is proposed is defined in the suspended tariffs as follows:

"Spotting" service is the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and industrial plant tracks, and includes:

- (a) One placement of a loaded car which the road haul or connecting carrier has transported, or
- (b) The taking out of a loaded car from a particular location in the plant for transportation by road haul or connecting carrier.
- (c) The handling of the empty car in the reverse direction.

The industries to which the charge applies are divided into three lists. The first of these lists appears in the tariff of the Pennsylvania Railroad Company, which may be taken as typical, under the heading:

List of industries having "industrial plant tracks" connected with the tracks of these companies on which these companies performed spotting service in the past and on which they will, if desired, continue to perform such service on and after the effective date of this tariff at the charge provided herein.

The second list appears in the same tariff under the heading:

List of industries having "industrial plant tracks" connected with the tracks of these companies on which the industry has performed spotting service in the past. The charge of these companies for performing spotting service for the industry on its plant tracks connecting directly with the tracks of these companies will be as per this tariff, provided the performance of this service by these companies is shown to be practicable and is agreed upon.

The third list appears under the following heading:

List of industrial railways (incorporated). These companies will perform "spotting" service on or over the tracks of these railways only by special agreement.

Some of the suspended tariffs do not contain the third list.

The basis of selection of industries, if there may be said to have been any such basis, varied with the different respondents. The necessity for an intraplant service in addition to the movement of cars incident to the receipt and delivery of carload freight seems to have been controlling in some cases, but in general the industries were arbitrarily selected, and range from the ordinary mill or factory with a single spur or private siding to the large iron and steel industries having an interior system of rails called a plant railway.

Considerable testimony was presented by both respondents and protestants with reference to the physical layout of the tracks over which the service is performed, the character and extent of that service, and the approximate cost thereof.

It does not appear that the terminal facilities of the respondents, exclusive of industry spurs, private sidings, and tracks of industrial plants, are now adequate for the receipt and delivery of all carload freight which they have been accustomed to receive and deliver upon such tracks at convenient points for loading and unloading, and respondents do not show that they could provide such terminal facilities, but some of the protestants testified that if such terminal facilities were provided by the carriers they would not use them.

It is admitted by the principal respondents that the proposed charge and also the lists of industries named in the tariffs are tentative merely, and that if the tariffs should take effect as filed unjust discrimination would result in that there are many industries not named in the suspended tariffs for which the respondents perform without an additional charge therefor the same service for which they propose to require the industries named in the suspended tariffs to pay the spotting charge in question. But while these respondents concede that the proposed tariffs can not be justified, they ask us to indicate how far they may go in imposing spotting charges.

One of the respondents, the Chesapeake & Ohio Railway Company of Indiana, insists that its proposed charge is justified by the mere fact that the industries upon which it proposes to impose the charge are located upon a private track which it does not own or control, and which is not a part of its terminal facilities. This respondent concedes that the line-haul rate covers the transportation to and from the point of connection of its tracks with the track on which the industries are located and which it claims to be a private track, but it insists that it has no right to perform any service over a private track without making a charge therefor in addition to the line-haul rate, and that it not only may but must add to the line-haul rate a reasonable charge for the switching of cars between the industries in question and point of connection of its tracks with the track on which the industries are located.

The protestants insist not only that the proposed tariffs can not be justified, but that the line-haul rates cover the placement of cars upon industry tracks at convenient points for loading and unloading without regard to the size of the plant or the ownership or control of the tracks over which the cars are moved, and that no charge for the spotting service in addition to the line-haul rate could be justified.

It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line-haul rate, and in the *Los Angeles case*, 18 I. C. C., 310, we held that where this service is merely a substitute for team-track receipt and delivery of carload freight the line-haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. Our order in that case was upheld by the Supreme Court. *Los Angeles case*, 234 U. S., 294. The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul.

As existing rates must be deemed to have been constructed to cover the customary placement of cars at factory doors, whether upon an industry spur or private siding, or upon the tracks of an industrial plant, and the outward movement of cars from such tracks, without regard to the size or nature of the plant, to now add a charge to the line-haul rate for that service would be revolutionary.

While we have from time to time called the attention of the carriers to the possibility of increased revenues from certain sources, and have suggested that it might be that the carriers ought to make a charge in addition to the line-haul rate for some services in connection with the movement of cars within industrial plants, for

which no such additional charge is now made, we have never intended to suggest that an additional charge would be proper for services which by long continued general custom and usage have been treated as covered by the line-haul rate.

In *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237, we stated that common carriers could not be called upon as a part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry, but the case did not require a decision of that question. The point actually decided was that the complainant was not entitled to an allowance from the carrier for a service which the carrier was ready and willing to perform, and which the complainant performed because it was not convenient for it to permit the carrier to perform the service. In that case the Commission said (p. 244) :

The complainant is not entitled to compensation as demanded by it in the complaint or on any other ground developed upon the record. It assumed charge of the work of switching cars between its storage tracks and various points within the inclosure of its plant, not because the defendants refused longer to spot cars for it or because they did not give the complainant a reasonably good service in that respect, but simply because the growth of its business to vast proportions, the multiplication of its buildings, and the extension of its switching arrangements within the inclosure required the complainant to take charge of the interior switching for itself and to exclude the defendants from its plant. And it now demands compensation for doing that which it claims the defendants are under the obligation to do, but which it does not and could not permit them to do. On that ground alone the complaint is without merit. Relief against a defendant must ordinarily be predicated upon his failure or refusal to do what he is legally bound to do and not upon the fact that the complainant has volunteered to do it for him.

As said by the Supreme Court in *Atchison Railway Co. v. United States*, 232 U. S., 199, 214, whatever transportation service or facility the law requires the carriers to supply they have the right to furnish, and it does not follow, therefore, that because the line-haul rate covers the movement of cars incident to the receipt and delivery of carload freight on industry spurs, or on the interior tracks of industrial plants, that the owner of the property transported may in every case receive an allowance from the carrier when he performs that service.

In *Industrial Railways case*, 29 I. C. C., 212, the Commission also expressed the opinion that the line-haul rate does not cover the movement of cars incident to the receipt and delivery of carload freight at large industrial plants where the movement is through a network of interior tracks, but in that case also the question presented was one of allowances, and we did not undertake to determine the number of tracks over which the cars must move prior to their receipt or

delivery by the carrier in order to deprive the owner of the property transported of the right to an allowance for the service. We did, however, in that case recognize the fact that the line-haul rate may cover the service of spotting a car at the factory door on a private siding, as we there said (pp. 225-226) :

Under the common law as construed in the practically unanimous decisions of the courts, a delivery of carload freight to a shipper having a private siding is made by shunting the car upon the switch, clear of the main tracks. All services upon the siding beyond that point, in placing the car for loading or unloading at a particular spot convenient to the shipper, are what may be called volunteered services in the sense that they are in addition to the main-line haul and in excess of any obligation of service by the carrier at common law. Nevertheless, the custom of making deliveries at the warehouse or factory door on private sidings is one of long standing in this country, and under certain language in the act it is possible that the carriers may be required, upon reasonable compensation, to do this spotting, as it is called. We find no authority, however, English or American, that holds or intimates that the line carrier, in connection with the main-line haul, is under any obligation to spot a car at the factory door on a private siding except upon reasonable compensation included in the rate itself or set up in the form of a special charge.

There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified, but the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose.

The mere fact that many individual plants are operated together as a single industry does not deprive the industry of the right to such a service in the receipt and delivery of carload freight at each of the several plants as that plant would be entitled to have if it were operated separately, unless the collective operation so far removes the necessity for such a service as to make it unreasonable for the industry to demand the service.

To permit the carriers to add to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at industries selected because of their size or complexity, or upon some other basis equally uncertain, while treating a like service at all other industries as covered by the line-haul rate, would result in unjust discrimination of a flagrant character.

The argument that while the line-haul rate may cover the movement incident to the receipt and delivery of carload freight when that movement is over an ordinary industry spur it does not cover a like service when the movement is over the interior tracks of an industrial plant is founded upon the assumption that the carrier and the industry have the joint use of the industry spur while the interior tracks of the industrial plant are used exclusively by the industry. The fact is, however, that the service which the carrier renders in the movement of cars over the interior tracks of the industrial plant for the purpose of receiving and delivering carload freight of the industry is a public service, and the tracks are used both for that public service and for the private purposes of the industry. It is immaterial that the carrier may not use the tracks for all the purposes for which it uses the ordinary industry spur. The difference is merely one of degree and not of kind.

Especially ought the tracks of the industrial plant to the extent that they are used by the carrier for a public service be treated as a part of its terminal facilities where the carrier does not show that it would be possible for it to provide the necessary terminal facilities in any other way.

The public interest is served in many ways by permitting the carriers to use the tracks of industrial plants as a part of their terminal facilities. The exclusively owned terminals of the carriers are thereby relieved of a heavy burden under which they would either break down completely or be so congested as to greatly inconvenience shippers who are compelled to receive and deliver their freight in those terminals. The distribution of terminals also tends to prevent the undue concentration of industries and consequent concentration of population, thus aiding the solution of one of our social problems.

The proposed spotting charge of the Chesapeake & Ohio Railway Company of Indiana requires separate consideration. The industries to which it is proposed to apply this charge are located on the tracks of the Muncie & Western Railroad at Muncie, Ind. In *In re Muncie & Western R. R. Co.*, 80 I. C. C., 434, we held this road to be a mere plant facility of the principal industry located thereon, and not entitled to a division of joint rates with the trunk lines. That case is now pending on a petition for rehearing by which we are asked to reconsider that finding.

There are only two industries on the Muncie & Western, and these industries are served by two belt lines in addition to the Muncie & Western. The principal one of these two industries has a large plant, and the three lines referred to serve different parts of the plant. When the movement is over either of the two belt lines the Chesapeake & Ohio of Indiana absorbs the switching charge of that line and gives the shipper the Muncie rate, but it now proposes to

add to that rate a minimum charge of \$2 per car when the shipment moves over the Muncie & Western. If the Muncie & Western is a mere plant facility, the line-haul rate of the Chesapeake & Ohio of Indiana to and from Muncie covers the movement of cars incident to the receipt and delivery of freight on that track. If that road is a common carrier, the addition to the line-haul rate of a charge for the switching of cars over that road to and from industries located thereon would create an unjust discrimination so long as the trunk line absorbs the switching charges of other roads which serve the same industries, as it now does, the service in each case being substantially the same. The only reason which the Chesapeake & Ohio of Indiana gives for imposing the proposed charge for the switching of cars over the Muncie & Western Railroad to and from the industries thereon, while it absorbs the switching charges of other roads which serve the same industries, is that such other roads are common carriers, while the Muncie & Western Railroad, as the Chesapeake & Ohio of Indiana claims, is only a plant facility. It is unnecessary, therefore, in this proceeding to determine whether the Muncie & Western is or is not a common carrier, as in either case the proposed spotting charge has not been justified.

With the growth of terminal areas and the consequent increase of terminal expenses, there may be a growing need for a separation of the charges for line hauls from the charges for terminal services, and a graduation of charges for terminal services so that each industry within the terminal area will pay in proportion to the service it receives in addition to the line haul, if such a system should in the future be deemed to be preferable to what now obtains; but before that could be done there would have to be a separation of the cost of the line haul from the cost of the terminal service, and a complete reconstruction of rates.

We conclude, therefore, and find that the respondents have not justified the suspended tariffs, and an order will be entered requiring those tariffs to be canceled. The respondents may, however, file new tariffs providing for spotting charges in those instances in which the terminal services performed exceed the services which under established custom is, or should be, performed for the line-haul rate, in accordance with the views expressed in this report.

COMMISSIONER HARLAN dissents from the conclusions of the Commission in this proceeding and will later file a separate report.

No. 7408.
REEVES COAL COMPANY
v.
PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted January 16, 1915. Decided June 30, 1915.

A shipment of bituminous coal en route from La Follette, Tenn., to Vermilion, S. Dak., was ordered reconsigned to Ghent, Minn. Defendants failed to effect the reconsignment, and higher charges were collected than would have accrued if complainant's instructions had been followed. Reparation awarded.

S. B. Houck for complainant.

C. M. Booth for Pere Marquette Railroad Company and its receivers.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal business at Minneapolis, Minn. By complaint, filed October 7, 1914, it alleges that the failure of defendant, Pere Marquette Railroad Company, to comply with reconsigning instructions compelled complainant to pay unlawful charges for the transportation of a carload of bituminous coal shipped October 17, 1912, from La Follette, Tenn., to Vermilion, S. Dak., and ordered reconsigned at Ludington, Mich., to Ghent, Minn. Reparation is asked.

The shipment weighed 45,900 pounds and moved from La Follette over the Louisville & Nashville Railroad, routed Pere Marquette Railroad and Chicago, Milwaukee & St. Paul Railway. Upon its arrival at Ludington, the morning of October 30, 1912, over the Pere Marquette, complainant ordered the commercial agent of the Pere Marquette at Minneapolis, Minn., to change the destination to Ghent, with routing by way of Manitowoc, Wis., and the Chicago & North Western Railway. The order was telegraphed to the agent at Ludington the same morning and was received by him the same day, before the car left Ludington. The order was not complied with and the car was transported to Vermilion, where it remained until \$21 demurrage had accrued, when without further instructions from complainant it was forwarded to Ghent. Total charges were collected in the sum of \$251.64. If complainant's reconsigning instructions had been observed, the charges assessable for the transportation

from La Follette to Ghent would have amounted to \$87.21, at a rate of \$3.80 per ton: \$1.90 to Manitowoc, \$1.90 beyond, plus \$2 for reconsignment. Reparation is asked in the sum of \$164.43, the difference between the charges collected and \$87.21.

It was a long-standing practice for complainant's cars to be held at Ludington by the Pere Marquette for reconsigning instructions, although the details of the arrangements are disputed. Complainant contends that its instructions were to hold all cars arriving at Ludington for reconsigning instructions irrespective of the destinations shown. The Pere Marquette, the principal defendant, asserts, on the other hand, that complainant's instructions were to hold at Ludington for reconsigning orders only cars originally consigned to Minneapolis and St. Paul, Minn.; also that intended reconsignment required pertinent notations on the original bills of lading, although this is not pressed and admittedly is not the general practice. Whatever complainant's general instructions may have been, notice to reconsign the cars involved was received by the agent at Ludington before the car left that point.

The Pere Marquette's only other defense is the following provision in its tariff, applicable to shipments reconsigned at Ludington:

When requests are made for reconsignment of coal, coke, or iron ore in transit, this company will make reasonable efforts to stop cars on its line and forward to new destination, but will not be responsible in case of failure on the part of any of its employees to make such reconsignment.

The provision is both insufficient and unreasonable. It affords the widest opportunity for unjust discrimination between shippers and represents an attempt to evade responsibility which the law requires to be assumed. It should be revised to make shippers' rights under it definite and certain, and to eliminate the Pere Marquette's attempt to disclaim responsibility for the acts, neglects, or omissions of its agents.

Upon all of the facts of record we find that the failure of the Pere Marquette to comply with complainant's reconsigning orders was unreasonable and resulted in charges greater than the charges which would have accrued if complainant's instructions had been followed; that complainant made the shipment described in accordance with the foregoing statement of facts, and paid charges thereon in the sum of \$208.03, the total amount collected minus the charge of \$43.61 imposed for transportation from Manitowoc to Ghent paid by the consignee; that complainant was damaged to the extent of the difference between the amount paid and the amount it would have paid for the transportation from La Follette to Manitowoc, \$43.61, plus a reconsigning charge of \$2, and that it is entitled to reparation in the sum of \$162.42, with interest from December 20, 1912. An order will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET No. 525.
COAL RATES FROM ILLINOIS MINES TO OMAHA, NEBR.,
AND OTHER POINTS.

Submitted April 15, 1915. Decided July 10, 1915.

Proposed increase, from \$2.05 to \$2.25 per net ton, in the rate on bituminous coal from points on the Southern Railway in the Belleville district in Illinois to Omaha, Nebr., and points grouped therewith, found to have been justified.

F. H. Behring for Southern Railway Company.

T. R. Farrell for Wabash Railroad Company and its receivers.

R. W. Ropiequet for Southern Coal, Coke & Mining Company, protestant.

A. P. Humburg, W. F. Dickinson, W. T. Hughes, C. B. Cardy, Thomas Bond, T. J. Norton, J. W. Souby, Garrard Winston, G. H. Herbel, R. B. Scott, and K. F. Burgess for Illinois Central Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago & Eastern Illinois Railroad Company and its receivers; and other carriers.

M. A. Patterson for Chicago, Rock Island & Pacific Railway Company, intervener.

G. H. Kummer for Chicago & Eastern Illinois Railroad Company, intervener.

W. A. Holley for Chicago, Burlington & Quincy Railroad Company, intervener.

Eugene McAuliffe for St. Louis & San Francisco Railroad Company and its receivers and Atchison, Topeka & Santa Fe Railway Company, interveners.

C. E. Warner for Kansas City Southern Railway Company, intervener.

J. A. Sargent for Central Coal & Coke Company, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, set forth opposite the stations indexed Nos. 2684 to 2701, inclusive, in a tariff designated as Southern Railway Company, St. Louis-Louisville divisions, supplement No. 15 to I. C. C. No. C-1463, filed to take effect October 5, 1914, respondents, Southern Railway and Wabash Railroad, proposed to cancel a joint rate of

\$2.05 per net ton on bituminous coal from the Belleville district in Illinois to Omaha, Nebr., and grouped points, rendering applicable a combination rate of \$2.25 based on East St. Louis, Ill. Upon protest by the Southern Coal, Coke & Mining Company, of St. Louis, Mo., and the C. W. Hull Company, of Omaha, the schedules were suspended until August 2, 1915. At the hearing the Illinois Central Railroad and certain other lines, the Central Coal & Coke Company, of Kansas City, Mo., and others intervened in support of the increased rate proposed.

The Belleville district in Illinois comprises an area extending for some distance north, east, and south of East St. Louis, a diagram of which is set forth in the report rendered in *The Illinois Coal cases*, 32 I. C. C., 659, 663. The producing points involved are located along the St. Louis-Louisville divisions of the Southern Railway in that district. The northern section of the Belleville district overlaps the southern section of the Springfield group of points, which also is shown on the diagram named. A rate of \$2.05 applies from the Springfield group to the destinations involved. The current rate of \$2.05 from the lower section of the Belleville group, effective September 28, 1914, involved generally a reduction from \$2.25, which represented an increase effected after various fluctuations, in 1909. For some time the Southern Railway carried the \$2.05 rate in connection with the Rock Island and Burlington lines, respectively. Its withdrawal in 1909 was at the request of the Rock Island and the Burlington. A rate of \$2.40 applies from southern Illinois mines, south of the Belleville district.

The Wabash was prompted to join with the Southern in the \$2.05 rate because its equipment, used to move grain eastward from the Omaha market, was returning light and the development of coal tonnage for the westbound movement was desirable. It did not appreciate, however, that the reduction would disturb the adjustment of coal rates from Illinois to Omaha. Admittedly the maintenance of the reduced rate would, on the basis of the present differences, result in lowering the rate from Springfield to \$1.85 and from southern Illinois to \$2.20, while the other Belleville district lines presumably would insist on carrying a rate of \$2.05 from other districts. Rates of \$2.05 from the Springfield group, \$2.25 from the Belleville group, and \$2.40 from southern Illinois, although not consistently maintained, are considered by the Wabash and the intervening lines to represent the normal basis. The Belleville group rate is composed of a proportional rate of 25 cents to East St. Louis and a local rate of \$2 from East St. Louis to Omaha; the southern Illinois rate of a proportional of 40 cents to East St. Louis and the \$2 local rate beyond. A bridge charge of 20 cents over the Missis-

issippi River is absorbed by the Wabash. The revenue of the Southern is the same whether the rate is \$2.05 or \$2.25.

The Southern believes that the \$2.05 rate represents an appropriate relationship to the rate from the overlapping portion of the Springfield group, where the routing is through East St. Louis and St. Louis. A substantially lower tonnage was shown from Belleville under the former \$2.25 rate. The \$2.05 rate applies from the upper and lower portions of the Springfield group for average distances of 470 miles and 456 miles, respectively, as compared with a maximum of 447 from the Southern Railway mines in the Belleville group. A witness for the Southern expressed the opinion that the lines serving the southern Illinois mines would meet a \$2.05 rate on a 15-cent differential basis. Witness admitted that coal can move to Omaha from Springfield and Pana, in the Springfield group, over single lines as against two-line movements from the Southern Railway mines, but added that that consideration has not affected the Illinois adjustment, which he explained to be entirely territorial.

The intervening carriers sought to show that because of competitive conditions the natural and ultimate influence of the \$2.05 rate must be a general derangement and depression of the Illinois adjustment and of the rate structure covering the movement of coal to Omaha from Wyoming, Colorado, Oklahoma, Kansas, Arkansas, Missouri, and Iowa. Comparative rates and ton-mile revenues were given for the various fields as evidence that the proposed rate from the Belleville group would be reasonable. The Chicago & Eastern Illinois Railroad stated that the \$2.05 rate from Pana, Ill., via St. Louis and the Wabash and Missouri Pacific lines to Omaha will be canceled as soon as possible.

Protestant regards \$2.05 as a reasonable rate, intrinsically and relatively, except in its application to steam coal, when it is unreasonably high. Other fields have different rates on different grades of coal. Distance and ton-mile earning comparisons are made between the Springfield and Belleville groups, and with the same traffic from such points as Pittsburg, Kans., Rich Hill, Mo., and Blue Jacket, Okla. Unlike the Belleville district mines, the mines in the southern Illinois field are reached principally by spurs from the main lines. The latter pay an assembling charge of about 10 cents per ton. The rate wars on coal from the interior group mines prior to 1910 were due largely to the efforts of the Southern Railway to protect the mines on its rails, which mines are nearer to East St. Louis than those on the rails of any other coal-carrying road except the Litchfield & Madison Railway. In *The Illinois Coal cases, supra*, the Southern Railway, and other carriers serving the so-called inner group, sought to secure an increase from 32 cents to 37½ cents in the

local rate from its mines to East St. Louis and a corresponding increase to St. Louis. The local rate, however, is still 32 cents, the State Public Utilities Commission of Illinois not having acted upon the tariffs proposing to increase the intrastate rate to 37½ cents. However, as we have seen, the rate to Omaha and group is composed of a proportional rate of 25 cents to East St. Louis and a proportional rate of \$2 beyond. In the *Illinois Coal cases, supra*, the Southern Railway introduced testimony tending to show that coal traffic handled to East St. Louis at any rate lower than 45 cents per ton was handled at an actual loss. In *Breese-Trenton Mining Co. v. Wabash R. R. Co.*, 19 I. C. C., 598, the issue was as to the reasonableness of the carload rate of \$2 per ton from East St. Louis to Omaha and South Omaha on soft coal originating in Illinois, and complainant therein sought the restoration of the former rate of \$1.80 per ton. We held that the \$2 rate was not unreasonable. The interveners insist that the practical question before us is whether or not the conditions have changed since 1910 when we decided that case, and that it is idle to argue that the Commission did not consider the through charge of \$2.25 as a reasonable rate for the through transportation in this decision. The division of the joint rate accruing to the Southern Railway from its mines to East St. Louis is the same, 25 cents, under the present and proposed rate, and therefore, the question is narrowed to the reasonableness of the rate beyond St. Louis, already held reasonable. The Wabash Railroad does not reach mines in the inner group; the Southern Railway serves only mines in that group. The latter road, therefore, has no interest in the differential to be maintained between the outer and inner groups. The contention of the interveners that the maintenance of the present rate will disrupt and depress rates from other fields appears to be satisfactorily established, and upon all of the facts of record we find that the proposed increased rate is justified and our orders of suspension will, therefore, be vacated as of August 1, 1915.

34 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 537.
RATES ON HOGS BETWEEN SALT LAKE CITY, UTAH,
AND CALIFORNIA POINTS.

Submitted May 21, 1915. Decided July 3, 1915.

Proposed increased rates for the transportation of hogs in carloads between points on respondent's line in Utah and points in California found to be justified and order of suspension vacated.

W. F. Lincoln and *A. S. Halsted* for respondent.

F. P. Gregson for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding involves the reasonableness of proposed increased rates on hogs in carloads between points in Utah and points in California on the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter called respondent. The increased rates proposed were filed to take effect November 6, 1914, in schedules contained in supplement No. 8 to respondent's tariff I. C. C. No. 386. Upon protest of the Hauser Packing Company and the Pacific Coast Beef & Provision Company, which operate slaughter and packing houses at Los Angeles, Cal., the schedules were suspended until March 6, 1915, and later until September 6, 1915.

The present rate on hogs between the points involved is \$82.50 per car 36 feet 6 inches long. The proposed rates range from \$83 between Heist, Utah, and Los Angeles, 516 miles, to \$106.50 between Salt Lake City, Utah, the eastern terminus of respondent's line, and Los Angeles and East San Pedro, Cal., the western termini, 777 and 804 miles. Hogs are raised extensively in southeastern Idaho and in northeastern Utah contiguous to Salt Lake City, and the principal, if not the only, movement of any consequence over respondent's line is from Salt Lake City to Los Angeles. The testimony offered at the hearing was directed principally to the rate between these points. The present rate of \$82.50 yields a per car-mile revenue of 10.6 cents. The proposed rate is \$106.50, which would yield a per car-mile revenue of 13.7 cents.

Respondent's line was first opened for through traffic from Salt Lake City to Los Angeles in May, 1905. On December 3, 1906, rates of \$92.50 per car 30 feet long and of \$109.15 per car 36 feet long

were established from Salt Lake City to Los Angeles. On July 12, 1907, the rate on cars 36 feet long was reduced to \$106.40 and made applicable also to cars 36 feet 6 inches long, which rate remained in effect until April 28, 1911, when it was reduced to \$82.60. On August 25, 1913, it was reduced further to \$82.50, the rate now in effect.

Respondent argues that the present rate from Salt Lake City to Los Angeles is unreasonably low. It shows that between Salt Lake City and Los Angeles it operates through desert country from Caliente, Nev., to Daggett, Cal., over 300 miles, where traffic is scarce and the cost of operation high on account of the difficulty in obtaining water and the necessity of paying employees higher wages than the prevailing wages in other sections of the country. It states also that during a considerable part of the year the temperature in this territory is extremely high, causing considerable shrinkage and resulting in loss and damage claims on live-stock shipments. The present rate on hogs between Salt Lake City and Los Angeles is 62 per cent of the rate on cattle, the proposed rate 80 per cent of the rate on cattle, and 89 per cent of the rate on cattle prescribed by us for about the same distance from points in Arizona to Los Angeles, in *American National Live Stock Assn. v. S. P. Co.*, 32 I. C. C., 515, which was the relationship resulting from the rates prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, on shipments to Forth Worth, Tex., Oklahoma City, Okla., and Wichita, Kans. Other comparisons with rates on hogs from and to various points were submitted by respondent, which also indicate that the proposed rates would not be unreasonable.

Protestants cite the rate applicable from Ogden to San Francisco over the Southern Pacific, which is the same rate as the rate now in effect from Salt Lake City to Los Angeles. They show that the distance from Salt Lake City to Los Angeles is about the same as the distance from Ogden to San Francisco and assert that the transportation conditions are not dissimilar. They state also that 70 per cent of the hogs slaughtered at Los Angeles are received from Salt Lake City; that Los Angeles is in active competition with San Francisco in shipping packing-house products into the San Joaquin Valley, and that if the proposed increased rate from Salt Lake City to Los Angeles becomes effective the number of points in the territory described to which they can ship their products will be materially restricted. They do not show, however, to what extent the proposed increased rates would restrict the movement of their products. Protestants also cite respondent's rate of \$78 per car on sheep from Salt Lake City to Los Angeles, arguing that the cost incidental to the transportation of sheep is greater than the cost for hogs, because

sheep are more easily killed in transit. Claims for damages on sheep are said to amount to more than the claims on hogs. However, the total claims paid by respondent for damages on shipments of hogs from Salt Lake City to Los Angeles in 1913 and 1914 aggregated \$4,535.04, and the record fails to show definitely to what extent claims for damages on sheep exceed claims on hogs or that there is any movement of sheep from Salt Lake City to Los Angeles.

Upon all the facts of record we find that respondent has justified the proposed increased rates, and an order will be entered vacating our order of suspension.

34 I. C. C.

No. 6909.¹
FERD BRENNER LUMBER COMPANY
v.
MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-
SHIP COMPANY.

Submitted January 9, 1915. Decided June 30, 1915.

Rates charged for the interstate transportation of carload shipments of logs, milled in transit at Alexandria, La., found unreasonable and unlawful. Reparation awarded.

H. J. Fernandez for complainant.

C. W. Owen, Denegre, Leovy & Chaffe, and *F. H. Wood* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related, were heard together, and will be disposed of in one report. Complainant is a corporation engaged in the manufacture and sale of lumber, with one of its plants at Alexandria, La. By complaints, filed May 12, 1914, and June 15, 1914, it alleges that defendant collected unreasonable charges for the transportation of carload shipments of logs from Barbreck and other Louisiana points to Alexandria, milled at Alexandria and reshipped as finished products to New Orleans for export, and also to interstate destinations. Reparation is the only object of the complaint.

No. 6909 involves 34 carloads of hardwood logs shipped from Barbreck, Sunset, Burleigh Spur, Gold Dust, and Stewart, La., to Alexandria between October 3, 1912, and April 14, 1913. Complainant paid charges to Alexandria on 803,600 pounds of logs at the local rate of 7½ cents per 100 pounds on forest products and at the local rate of 6½ cents per 100 pounds on 1,342,300 pounds. Between December 13, 1912, and May 15, 1913, complainant shipped from Alexandria to New Orleans, for export, and to Oakland, Cal., 14 carloads of finished lumber, aggregating 804,400 pounds, manufactured from hardwood logs that originated at the points named.

No. 7016 involves 23 carloads of hardwood logs, aggregating 1,464,100 pounds, shipped to Alexandria from Garland, Belleview, Stewart, and Gold Dust, La., between April 3, 1913, and October 1, 1913. Complainant paid charges to Alexandria on 1,105,700

¹The proceeding also embraces complaint in No. 7016, *Same v. Same*.

pounds at the rate of 6½ cents per 100 pounds on forest products, at the local rate of 6½ cents on 113,100 pounds, and at the local rate of 7½ cents on 245,300 pounds. Between September 15, 1913, and December 22, 1913, complainant shipped from Alexandria to New Orleans, for export, and to Laredo, Tex., and Hampton, Va., nine cars of finished lumber aggregating 492,200 pounds manufactured from hardwood logs.

Defendant maintained a transit arrangement at Alexandria on logs, rough heading, staves and stave bolts from October 3, 1912, until July 22, 1913; and on rough heading, staves and stave bolts from July 22, 1913, until September 10, 1913. The transit ratio was 3 pounds of logs to 1 pound of rough lumber. Several of the cars from Gold Dust moved during the second period named. Complainant assails the failure of the transit tariff in effect during the second period named to provide transit service on logs. The tariff in effect during the first period named provided for milling logs in transit at Alexandria, but the transit rates provided were not applied to the shipments involved, which moved when it was in effect, because of noncompliance with the requirements of item No. 4 of the tariff, and defendant's interpretation of item No. 9.

Item No. 4, under the heading "Rates and commodity description covering inbound movement," provided as follows:

(a) Bills of lading, waybills, and freight bills covering shipments given transit privileges under this tariff must clearly indicate the character and description of shipment. For example: Pine logs, cypress logs, gum logs, pine lumber or gum lumber, gum piling, etc.

(b) If inbound freight bill or waybill and outbound bill of lading and waybill does not show this information, it must be obtained by the owners, in certificate form, from official inspector of this company, or other satisfactory evidence thereof must be furnished at or before time of reshipment, otherwise, such freight bills shall not be available for transit privileges under these rules.

Complainant admits noncompliance with this provision. Item 9 provided that—

Rates, rules, and regulations provided herein apply only when transit point is in direct line of movement from point of origin to destination, except where a back haul not exceeding 75 miles is involved. If the back haul exceeds 75 miles, transit privileges will not be permitted.

Three questions, therefore, are involved: First, whether the omission of transit service on logs during the period from July 22, 1913, to September 10, 1913, was unreasonable; second, whether complainant's noncompliance with item 4 should exclude the application of transit rates provided, now that it appears that the shipments out were actually products of the same kind of lumber as was hauled in; third, the correct interpretation of item 9.

Tariffs effective before and after the period from July 22, 1913, to September 10, 1913, provided transit service on logs as well as on rough heading, staves, and stave bolts, and no reason is given for the omission of logs, during the period named. Logs, moreover, usually take the same rate as rough heading, staves, and stave bolts.

Complainant argues relative to item 4 that most of the shipments originated at nonagency stations, so that it was impracticable to indicate the kind of wood shipped and to describe the shipments; also that the duty of ascertaining the necessary facts required by the tariff and of showing them in the freight bills rested primarily on defendant's agents. As the logs were all hardwood logs, complainant argues further, the finished lumber necessarily would be hardwood lumber, so that item 4 provided for unnecessary policing. The *Transit case*, 26 I. C. C., 204, is cited. Defendant refers to present tariffs which omit the requirements assailed, and argues that complainant would have it penalized for complying with our rulings relative to the proper policing of transit arrangements, as the more stringent requirements of rule 76 of Tariff Circular 17-A had not been withdrawn by the Commission until the greater portion of the shipments involved had moved. Defendant states that its subsequent tariffs were modified to comply with our later rulings.

All the points of origin are located on defendant's Alexandria branch from Alexandria to La Fayette, La., from 25 miles to 73 miles from Alexandria. The shipments, therefore, necessarily were hauled north into Alexandria for milling. The finished lumber, transported to New Orleans, was back hauled over the same line through the points of origin of the logs. Complainant contends that the measure of the back haul is the distance from the point of origin of the logs to Alexandria; defendant, that it is double the distance urged by complainant, and that all points 37½ miles or more south of Alexandria required a back haul of 75 miles or more within the meaning of item 9. Under the plain wording of item 9, whatever may have been its intent, the back haul is the distance to the transit point and not the double haul.

Upon all of the facts of record we find that the charges collected on the shipments which moved during the period while the provisions of item 4 of the tariff were in effect on the shipments involved were unreasonable to the extent that they exceeded the charges which would have accrued if the bills of lading had stated the kind of logs shipped; that the noninclusion of logs in transit service during the period from July 22, 1913, to September 10, 1913, resulted in unreasonable charges on the shipments which moved during that period to the extent that the charges collected exceeded the charges which would have applied on the basis of the net rates

applicable during that period; that the lawful back haul referred to in item 9 of the tariff involved should have been measured by the distance from the point of origin of the logs to the milling point; that complainant made the shipments described in accordance with the foregoing statement of facts and paid charges thereon as described; that it has been damaged to the extent of the difference between the charges paid and the charges which would have accrued at the rates and on the basis herein found reasonable; and that it is entitled to reparation with interest.

Complainant, accordingly, should prepare a statement covering the details of the shipments, which should be submitted to defendant for verification. Upon receipt of a statement so prepared by complainant and verified by defendant we will consider issuing an order awarding reparation.

One shipment forwarded from Gold Dust September 15, 1913, was charged for in excess of the lawful tariff charges. The exact amount of the overcharge does not appear, but whatever it was should be refunded to complainant promptly.

84 I. C. C.

No. 6349.
PEET BROTHERS MANUFACTURING COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 6, 1915. Decided June 30, 1915.

Import rate of 33 cents per 100 pounds for the transportation of coconut, copra, palm and palm-kernel oils in carloads from New Orleans, La., to Kansas City, Mo., not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

H. G. Wilson for complainant.

R. Walton Moore for Illinois Central Railroad Company; Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Kansas City Southern Railway Company; and Mobile & Ohio Railroad Company.

C. A. Torrence for Texas & Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Missouri Pacific Railway Company.

F. H. Moore for Kansas City Southern Railway Company.

Thomas Bond for St. Louis & San Francisco Railroad Company and its receivers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of soap at Kansas City, Mo. By complaint, filed November 18, 1913, it alleges that defendants' import rate of 33 cents per 100 pounds, minimum 30,000 pounds, for the transportation of coconut, copra, palm, and palm-kernel oils, from New Orleans, La., to Kansas City is unreasonable and unjustly discriminatory in comparison with lower import rates on the same commodities from New Orleans to Chicago, Ill., Cincinnati, Ohio, and St. Louis, Mo. Reparation is asked.

The oils named are used by complainant in the manufacture of soap, and constitute from 20 to 70 per cent of the total weight of the product. They are of approximately the same value and take the same commodity rate from New Orleans. The testimony is directed principally to the transportation of coconut oil, which will be taken as typical. The oils involved are imported and transported inland in wooden pipes, puncheons, and casks, varying in capacity from 400

pounds to 3,000 pounds. The size and weight of the packages render them difficult to handle. The cost of handling and loading the shipments at New Orleans varies from \$3 to \$7.50 per car, which is included in the rates. Heat renders the oils more fluid and induces leakage, but as shipments from the Gulf ports during the summer months are made under refrigeration, loss in transit and damage claims are infrequent. Of the 12,000,000 pounds of oil used by complainants in 1913, 75 per cent came from California, at rates not in issue. Approximately 5 per cent of complainant's product is marketed east of the Mississippi River, approximately 40 per cent in the middle west. Complainant's principal competitors in those territories are soap manufacturers located at Chicago, Cincinnati, and St. Louis, and at Omaha, Nebr., which takes the same rate as Kansas City. The rates cited in this report are stated in cents per 100 pounds.

Commodity rates were first published from New Orleans to Kansas City in 1907. The rates published ranged from 42 cents on coconut oil and palm oil to 51 cents on copra oil and palm-kernel oil. Effective January 7, 1908, a uniform rate of 53 cents was established, which was continued in effect on copra and palm-kernel oils until June 1, 1911, when the rate on palm-kernel oil was reduced to 30 cents. Effective July 1, 1909, the rate on coconut oil was reduced to 40 cents and effective August 26, 1909, to 25½ cents, increased June 1, 1911, to 30 cents, February 1, 1913, to 33 cents. Rates on various kinds of traffic from Port Arthur, Tex., were reduced in July, 1909, in order to attract business through Port Arthur, and the Kansas City Southern Railway and its connections simultaneously reduced the rate on coconut oil from Port Arthur to Kansas City to 25½ cents. Similar reductions followed immediately from the other Gulf ports. When it developed that none of this traffic moved through Port Arthur even at the 25½-cent rate, defendants increased the rate to 30 cents. The rate from New Orleans to Kansas City accordingly was increased as described.

Since February 23, 1915, the rates from New Orleans to St. Louis, Cincinnati, and Chicago on imported coconut oil have been: 24.8 cents to St. Louis; 16.9 cents to Cincinnati; 20.3 cents to Chicago. The rates effective in 1909 were 19 cents, 12 cents, and 15 cents, respectively; increased in 1911 to 20 cents, 15 cents, and 17 cents, respectively. Again, on February 1, 1913, the rates were increased to 23 cents, 16 cents, and 19 cents, respectively, and remained in force until February 23, 1915, when the present rates were established. The short-line distances, earnings per ton-mile, and car earnings on imported oil of the average loading, 33,460 pounds per car, from New

Orleans to St. Louis, Cincinnati, Chicago, and Kansas City were, on the basis of rates in effect prior to February 23, 1915, as follows:

	Rate.	Distance.	Revenue per ton- mile.	Car earnings.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	
St. Louis.....	23	718	6.4	\$76.98
Cincinnati.....	16	836	3.8	53.54
Chicago.....	19	930	4	63.57
Kansas City.....	33	867	7.6	110.42

One-line hauls are possible from New Orleans to St. Louis, Cincinnati, and Chicago, but not to Kansas City.

Defendants exhibit the carload rates on 22 of the principal commodities moving through New Orleans to St. Louis, Cincinnati, Chicago, and Kansas City, in comparison with the rates on coconut oil. The rates to Kansas City on 14 of the commodities named range from 10 to 24 cents higher than the rates on the same commodities to St. Louis. The average rate on all the commodities named from New Orleans to Kansas City is 39 cents. The value per car ranges from \$270 to \$5,245; the car earnings from \$114 to \$266. A car of domestic molasses other than blackstrap, for example, worth \$950 earns \$114 per car, at a rate of 30 cents per 100 pounds, applied to a carload of 38,000 pounds; a car of imported wire worth \$4,900, \$266 at a rate of 38 cents, applied to a carload of 70,000 pounds. A carload of coconut oil of 35,000 pounds is worth \$3,150 and at the 33-cent rate assailed earns \$115.50 per car.

The import rates on coconut oil from New York to St. Louis, Cincinnati, and Chicago are 30.5 cents to St. Louis, 23.4 cents to Cincinnati, and 26.3 cents to Chicago, a differential of 6 cents over the rates from the Gulf ports. The rate from New York to Kansas City is 39 cents, the same differential over the present rate from New Orleans to Kansas City. The relation has been maintained for many years.

Oil of the kind involved is rated fourth class in the western classification; fifth class in southern classification. Rates from New Orleans to Kansas City are governed by the western classification. The fourth-class rate from New Orleans to Kansas City is 53 cents, which is the present domestic rate on coconut oil from New Orleans to Kansas City. The southern classification governs from New Orleans to St. Louis, Cincinnati, and Chicago. The fifth-class rates from New Orleans to St. Louis, Cincinnati, and Chicago are, respectively, 40 cents, 44 cents, and 47 cents. The ratio of the commodity rate from New Orleans to Kansas City to the fourth-class rate applicable to Kansas City is higher than the ratios of the commodity rate to St. Louis, Cincinnati, and Chicago to the fifth-class rates to those points.

The commodity rate to Kansas City is 62 per cent of the corresponding class rate; the commodity rate to Chicago only 43 per cent of the corresponding class rate. However, as was said in *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547:

So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the class rate, even as between competing points.

Complainants urge also that the same earnings per ton-mile from New Orleans to Kansas City as from New Orleans to St. Louis, Cincinnati, or Chicago would give lower rates than the rates assailed. Distance, however, is not the only element to be considered.

Despite the higher rates from the Atlantic ports to St. Louis, Cincinnati, Chicago, and Kansas City than from New Orleans, most of the movement is through the Atlantic ports. During the year 1913 a total of only 285 tons of the oils involved moved to Chicago from New Orleans, 138 tons to Cincinnati, none to St. Louis, 1,031 tons to Missouri River points. For the first six months of 1914, 233 tons moved to Chicago, none to Cincinnati, none to St. Louis, 546 tons to Missouri River points. Cottonseed oil also is used in the manufacture of soap at Kansas City. Cottonseed oil moves in tank cars, loads more heavily, and is less valuable than coconut oil. The rate on cottonseed oil from New Orleans to Kansas City is 30 cents. As stated above, the differential for the oils involved from the Gulf ports under the Atlantic ports has not diverted any considerable portion of the total tonnage to the Gulf ports. The alleged preferential rates to St. Louis and Cincinnati evidently exist unused and therefore without prejudice to Kansas City.

Upon all of the facts of record we find that defendants have justified the rates assailed.

The complaint will be dismissed.

34 I. C. C.

No. 7270.
CLEVELAND SALT COMPANY

v.

PENNSYLVANIA COMPANY ET AL.

Submitted January 9, 1915. Decided June 30, 1915.

1. Charges for the storage of a carload of salt at La Grange, Ga., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.
2. Carriers ordinarily do not impose storage charges for profit, but to prevent congestion of their terminals; storage charges of public warehouses do not therefore afford a fair test of the reasonableness of storage charges imposed by carriers.

W. J. Tomkins for complainant.

R. Walton Moore for Cincinnati, New Orleans & Texas Pacific Railway Company; Western & Atlantic Railroad Company; and Atlanta, Birmingham & Atlantic Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the salt business at Cleveland, Ohio. By complaint, filed September 8, 1914, it assails as unreasonable and unjustly discriminatory certain charges collected by defendants for the storage of a carload of salt at La Grange, Ga.

The shipment moved from Cleveland September 12, 1913, consigned to complainant's order, notify R. S. Rowland. It arrived at La Grange over the Atlanta, Birmingham & Atlantic Railroad September 20, 1913. The consignee failed to accept it, and on September 27 the delivering carrier unloaded and stored it on its premises. Complainant was advised twice that the shipment was undelivered: October 4, 1913, by the Pennsylvania Company; October 14, 1913, by the Atlanta, Birmingham & Atlantic; but failed to arrange for its further disposition until December 20, when the shipment was removed from storage. Storage charges in the sum of \$71 were collected at the rate of \$1 per car per day, exclusive of Sundays and holidays. Certain demurrage charges accrued also, but are not in issue.

Atlanta, Birmingham & Atlantic tariff, which governed, provided in part as follows:

Rule 2, section B.—Carload freight placed on delivery tracks and subsequently unloaded in or on railroad premises is subject to demurrage rules while in cars and to storage rules after unloaded.

Rule 3, section A.—Freight * * *, held in or on this railway's premises in excess of time allowed, is subject to storage charges at the rate of 1 cent per 100 pounds per day, with a minimum charge of 5 cents for any one package or lot for one consignee, or at the option of this railway may be sent to public warehouses.

Section B.—Any fractional part of 100 pounds will be computed as 100 pounds and any fractional part of 24 hours will be computed as one day.

Section C.—In no case shall the amount so collected for storage of a less-than-carload shipment exceed the amount authorized to be charged as storage or demurrage on a carload of similar freight for the same length of time.

The tariff applied to all stations on defendant's line.

Complainant argues that the charges collected were not authorized by tariff and that a reasonable charge would have been \$1 per ton for the period of storage, the rate quoted by a public warehouse at La Grange after disposition had been made of the shipment. Complainant did not request storage in a public warehouse, but contends that it was defendants' legal duty to resort to the public warehouse. Defendants reply that the charges imposed were provided for by section C of rule 3 of the tariff under the interpretation given generally by the carriers in the southeast for several years. Section C of rule 3, however, relates exclusively to less-than-carload shipments, and its application to carload shipments is unauthorized. As the shipment weighed 37,790 pounds and the charge lawfully applicable was \$3.78 per car per day, there is an outstanding undercharge of \$197.38.

Carriers' storage charges are intended to prevent the accumulation and congestion of freight by inducing prompt removal from the carriers' premises. They are not ordinarily imposed for profit. The charges imposed by public warehouses, therefore, afford no fair criterion of the reasonableness of carriers' charges, nor is the value of the service rendered conclusive. The accomplishment of the purpose intended is the primary consideration. *Blackman v. S. Ry. Co.*, 10 I. C. C., 352; *New Orleans Storage Rules and Regulations*, 28 I. C. C., 605.

The allegation that the charges collected were unjustly discriminatory rests exclusively on defendants' action in assessing less than the lawful charge, and the possibility of different treatment of different shippers, under defendants' interpretation of the tariff involved.

Upon all the facts of record we find that the charges assailed are not shown to have been unreasonable or unjustly discriminatory, and an order will be entered dismissing the complaint.

84 I. C. C.

No. 5217.
LOUISVILLE BOARD OF TRADE ET AL.
v.
INDIANAPOLIS, COLUMBUS & SOUTHERN TRACTION COM-
PANY ET AL.

Submitted April 17, 1915. Decided June 15, 1915.

Divisions established of joint rates maintained over the through route between Louisville, Ky., and Indianapolis, Ind., and also between Louisville and points intermediate.

J. S. Burchmore, L. M. Walter, and Bernard Flexner for complainants.

F. D. McKenney, L. B. Wehle, and W. C. Carpenter for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In the original proceeding under the above title, 27 I. C. C., 499, in which the differences between these lines were first brought to our attention, the defendant carriers were ordered to establish a through route and maintain joint rates between Louisville and Indianapolis, and also between Louisville and other points intermediate to Indianapolis. In the report we observed (*id.*, p. 506) that while a failure by the defendant lines to agree upon the divisions of these rates was not improbable, we were without authority to act, in the absence of a definite disagreement; and it was suggested that "the parties in interest ought to take a broad view of their respective rights and duties and to arrive at a settlement of the divisions without delay or difficulty." Being later advised that the negotiations in that behalf had not resulted in any agreement, the case was reopened to consider the matter of divisions. Subsequently the defendants, the Louisville & Northern Railway & Lighting Company and the Louisville & Southern Indiana Traction Company, requested action upon the divisions not only of the joint rates established under the original report, but of the joint rates between Louisville and points in the state of Indiana on the line of the Indianapolis & Louisville Traction Railway Company north of Sellersburg to Seymour, inclusive, as to which the defendant lines were also in disagreement respecting divisions. The scope of the proceeding was accordingly broadened.

Certain of the tracks of the Louisville & Southern Indiana Traction Company extend, for a distance of approximately 4 miles, from its terminal station in Louisville across the Ohio River to a point in the

northern part of the city of Jeffersonville, called Water Works Siding, where they connect with the rails of the Louisville & Northern Railway & Lighting Company. From Water Works Siding the rails of the latter company extend northward for a distance of approximately 10 miles, to the town of Sellersburg, where they connect with the line of the Indianapolis & Louisville Traction Railway Company. This latter line continues northward a distance of 41 miles to Seymour, from which point the line of the Indianapolis, Columbus & Southern Traction Company, operated under lease by the Interstate Public Service Company, extends 61 miles to Indianapolis. The through route between Louisville and Indianapolis is thus completed over the lines of four railroads and embraces an aggregate distance of approximately 116 miles. Of these four carriers one, the Interstate Public Service Company, through stock ownership, controls two of the others, namely, the Louisville & Southern Indiana Traction Company and the Louisville & Northern Railway & Lighting Company. These three lines are spoken of on the record as the Insull lines. The Indianapolis & Louisville Traction Railway Company, forming a connecting link between Sellersburg on the south and Seymour on the north, has no financial or other relation with any other company in the route, and the record contains intimations of a lack of cordiality and possibly of some strain between the two interests.

The Louisville & Southern Indiana Traction Company operates street railways in New Albany and Jeffersonville, and also an interurban line connecting New Albany, Jeffersonville, and Louisville. Its cars cross the Ohio River over a bridge owned by the Louisville & Jeffersonville Bridge Company. For the use of the bridge it pays a toll of 1½ cents for each passenger, \$1.25 per round trip for each freight car, rental for the right of way over the bridge approaches, taxes on the structure forming the Louisville approach, taxes on both land and structure forming the Jeffersonville approach, and the cost of maintaining and operating interlocking appliances and signals. The freight service maintained over the route involved in this inquiry consists of one train a day in each direction, made up generally of a motor car and but one trailer. Just what proportion of the bridge expense of the Louisville & Southern Indiana is properly assignable to this service was not definitely shown of record. It is shown, however, that the bridge is used by that line mainly for its interurban passenger traffic, and, with the exception of the freight toll just mentioned, its expense for use of the bridge would be the same if the freight service were discontinued.

It is apparent from these facts that the part of the bridge expense properly assignable to this freight service must be relatively small and not comparable with the bridge toll in cents per 100 pounds exacted for similar service at other crossings, such as St. Louis. The petitioners

urge, nevertheless, that the established joint rates be divided by first allotting to the Louisville & Southern Indiana Traction Company arbitrary deductions, for the bridge expense, of 2 cents and 1 cent per 100 pounds on less-than-carload and carload freight, respectively, the balance to be prorated between the several carriers in the through route upon a mileage basis, reserving a minimum of 20 per cent, in addition to the bridge allowance, for the Louisville & Southern Indiana. In opposition to this the Indianapolis & Louisville Traction Railway Company insists that a straight mileage prorate, reserving to the terminal lines a minimum of 20 per cent, would be more just.

As a general rule where operating conditions are substantially similar the straight mileage prorate is accepted as a fair basis for dividing joint rates, but where the hauls are short or unusual terminal difficulties are encountered arbitrary proportions are not infrequently deducted before prorating and allowed to the line or lines affected by such disadvantages. Under such conditions it is not unusual also to provide for a minimum division to one or more of the lines forming the through route. This general method we think will afford a basis for fixing fair divisions in the case before us. The special operating conditions demanding our attention are found south of Sellersburg. When the complaint was filed these 14 miles in the through routes were operated wholly by the Louisville & Northern Railway & Lighting Company. At the hearing, however, it was asserted that the operating arrangement between that line and the Louisville & Southern Indiana Traction Company had been discontinued, and that the latter was then operating the Louisville terminal and the bridge, embracing a haul of 4 miles, leaving to the Louisville & Northern a haul of but 10 miles to Sellersburg. Both companies are owned by the same interests and it is intimated in the testimony that the new arrangement had been effected in order to secure for the two lines divisions larger in the aggregate than would be allowed if the 14 miles were operated by one line only. This may have been the motive in having two lines operate that portion of the routes instead of one line, but the record does not justify such a finding. It is singular, however, that although the case proceeded as if all the lines in the through routes had been joined in the tariffs naming the joint rates out of which we are asked to fix divisions, we find upon examination that the Louisville & Southern Indiana Traction Company is not named either as an initial participating or concurring carrier.

As heretofore stated, the Insull interests ask that before prorating the joint rate the Louisville & Southern Indiana be allowed on account of the bridge expense at Louisville, 2 cents per 100 pounds on less-than-carload traffic and 1 cent per 100 pounds on carload ship-

ments; and that in addition to this arbitrary deduction it also be allowed a minimum division of 20 per cent of the balance of the through rate. While we are not convinced that the bridge expense is sufficient to justify any such arbitrary bridge deductions, our attention is nevertheless attracted to the fact that the terminal service at Louisville is included in the haul of 14 miles south of Sellersburg. The expense of operating this part of the through route is shown by the record to be proportionately greater than the expense of operation incurred by the two lines north of Sellersburg; and this is a circumstance that must be taken into consideration in fixing the divisions. It will not do, however, to deal separately with the two lines south of Sellersburg, one having a haul of only 4 miles and the other of but 10 miles, and to give to each of them a minimum division of 20 per cent in addition to the bridge arbitraries demanded for the bridge service. Such an adjustment would yield to the lines forming this part of the route earnings altogether excessive for the service performed when compared with what would remain out of the through rate for the greater service performed by the independent line between Sellersburg and Seymour and the Insull line running north to Indianapolis.

From all the pertinent facts of record we find and conclude that the through route between Louisville and Indianapolis divides itself naturally into the three parts, namely, the haul from Indianapolis to Seymour, the haul from Seymour to Sellersburg, and the haul from Sellersburg to Louisville; that as between these parts of the route the joint rate should be prorated on a mileage basis with a minimum division of 20 per cent to the Interstate Public Service Company, a like minimum division to the Indianapolis & Louisville, and a like minimum division in the aggregate to the Louisville & Northern and the Louisville & Southern for their service south of Sellersburg, these two lines, considered as one, to have an arbitrary allowance before prorating, on account of the bridge and terminal conditions, of 1 cent per 100 pounds on less-than-carload shipments and one-half of 1 cent per 100 pounds on carload traffic, the arbitrary allowance to be included in the minimum division of 20 per cent of the through rate and not to be added to it.

We also find and hold that the bases of divisions and minima herein fixed should govern the apportionment of the joint rates applying between Louisville and points on the line of the Indianapolis & Louisville Traction Railway Company.

The failure of the Louisville & Southern Indiana Traction Railway Company to be shown as an issuing, participating, or concurring carrier in the tariffs under which traffic is carried over the through routes here in question has been mentioned, and it is assumed that this omission will at once be corrected.

An order will be entered in accordance with these conclusions.

No. 6409.

W. J. ECHOLS & COMPANY ET AL.

v.

AHNAPEE & WESTERN RAILWAY COMPANY ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 488.

RATES ON CHEESE TO ARKANSAS POINTS.

Submitted November 29, 1914. Decided June 28, 1915.

1. The proposed advance in rates on cheese from Wisconsin producing points to points in Arkansas not shown to be reasonable.
2. The rates theretofore in effect between the points in question not found to be unreasonable and complaint is therefore dismissed.

C. D. Mowen and Kimpel & Daily for complainants in No. 6409.

C. D. Mowen for Fort Smith Traffic Bureau.

A. R. Bragg for Merchants' Freight Bureau of Little Rock.

W. M. Taylor for Pine Bluff Traffic Bureau.

Thomas Bond for St. Louis & San Francisco Railroad Company.

J. M. Souby for Kansas City Southern Railway Company.

M. L. Clardy, H. G. Herbel, and F. G. Wright for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

Edwin Stewart for St. Louis Southwestern Railway Company.

J. E. Johanson for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The rates on cheese in carload lots from 14 producing points in the Green Bay and Lake Winnebago sections of the state of Wisconsin to points in the state of Arkansas, including Fort Smith, Mena, and Pine Bluff, are the subject of complaint in the first of the above-entitled proceedings. The rate from Appleton to Fort Smith was selected at the hearing as representative and will be so considered here. This is a commodity rate of 83 cents, and it is alleged by the complainants to be unreasonable to the extent that it exceeds 75 cents. Reparation is asked on 9 shipments.

Before that case was heard the defendants sought to advance the rates complained of, and the proposed increased rates, having been suspended, are under investigation in the second above-entitled

proceeding. Both cases were heard together and will be disposed of in one report, the proposed advances being first considered.

The southwestern lines publish class and commodity rates to the southwest from territorial rate groups in the states of Wisconsin and Minnesota. Points in Wisconsin near Chicago are included within the Chicago rate group, while those farther north are included in the St. Paul rate group. The rates from these groups are constructed by adding established differentials to the rates applicable from St. Louis and Kansas City, which points are the recognized gateways for traffic to and from the southwest. The differentials thus added are less, however, than the local rates from the originating territory to the gateways, and do not represent the proportions which accrue to the lines north and east of the gateways; neither are they uniform from the same originating points, but differ depending upon the destinations south of St. Louis. While the consistency of this method of rate making is not apparent, it appears to affect all traffic between the territories here involved. We will not, therefore, disturb it on the record made in this case, which pertains only to the rates on cheese.

Cheese in carload lots is rated third class. Appleton and related producing points lie within the St. Paul group, and the third-class differential over St. Louis from this group on traffic to points in the state of Arkansas is 24 cents. From the Chicago group the third-class differential over St. Louis is 12 cents. This latter differential was added to a 71-cent commodity rate applicable from St. Louis to Fort Smith in constructing the 83-cent rate that is the subject of complaint in the first of these two cases. In other words, for the purpose of fixing the commodity rates on cheese Appleton and related points were removed from the St. Paul group and grouped with Chicago rate points. Other cheese-producing points farther north in the St. Paul rate group, which had theretofore been on a parity with Appleton in these competitive markets, filed protests with the originating carriers against the resulting discrimination. Acting upon these protests the originating lines requested the southwestern lines to replace Appleton and related producing points in the St. Paul group. The southwestern lines sought to do so by reducing to 66 cents the commodity rate of 71 cents then in effect from St. Louis to Fort Smith and adding to it the St. Paul rate group differential of 24 cents, thus establishing a through rate of 90 cents instead of 83 cents. It is this advance that is involved in the second proceeding. The southwestern lines appeared at the hearing and offered testimony, but they were not prepared to and did not fully assume the burden of justifying the proposed rates. They explained that the change was made upon the representations of the originating carriers. But the latter lines were not represented at the hearing.

The burden resting upon carriers under section 15 of the act to justify increases in the rates proposed by them and under suspension by our order has always been regarded by the Commission as a substantial requirement in the law which can not be met by a merely perfunctory showing by the carriers. The propriety of such rates must be sustained by evidence of a probative nature showing satisfactory reasons for the increase and that the higher rates are reasonable. Upon the record before us, therefore, we must and do find and conclude that the respondents in the second of the above-entitled proceedings have failed to meet the burden of proof and must therefore withdraw the increased rates. The period of suspension having expired on May 7, 1915, the proposed rates then became effective. Under the conclusions here announced, the prior rates must now be restored, and upon a proper showing reparation will be awarded in cases where the increased rates have been collected on shipments moving after the date last mentioned.

The reasonableness of the rates involved in the first of these proceedings will now be considered. The complaint was filed by wholesale grocers and commission merchants of Fort Smith. Selecting as typical the rate of 83 cents from Appleton to Fort Smith, they allege it to be unreasonable when compared with the 60-cent rate in effect from Appleton to Joplin, in the state of Missouri, and with the 90-cent rate from Appleton to Texarkana, in the state of Arkansas. The latter rate also applies to Shreveport and Alexandria, in the state of Louisiana. The short-line distances from Appleton are, to Joplin, 757 miles; to Fort Smith, 883 miles; to Texarkana, 957 miles; to Shreveport, 1,035 miles; and to Alexandria, 1,097 miles.

It is urged by the defendants that compelling influences, not existing at Fort Smith, affect the rates to points with which the comparisons are made. The rate to Joplin is said to be controlled by the 60-cent maximum scale for 200 miles prescribed by the Missouri state authorities and applied between the Mississippi River and Missouri River through all crossings, irrespective of distance. A further depressing effect is claimed to result from the application as a maximum to Joplin of the 50-cent rate from St. Louis to Neosho, this being the Missouri state maximum scale for the short-line distance of 310 miles. Joplin, although 332 miles distant from St. Louis over the short line, is nevertheless intermediate to Neosho on the route through Kansas City. It is therefore controlled by the Neosho rate. The strength of these influences is strikingly illustrated by a test of the general rate relation between Joplin and Fort Smith. From St. Louis the first four class rates to Fort Smith are 150 per cent of the rates to Joplin; from Chicago the relation ranges from 132 per cent to 153 per cent; and from Appleton it ranges from 150 per cent to 175 per cent. Substantially the same differ-

ence exists in the first four class rates from St. Paul. The commodity rate of 83 cents from Appleton to Fort Smith is but 140 per cent of the 60-cent rate to Joplin, and therefore is somewhat below the established relation.

The rates from Appleton and related points to Texarkana, Shreveport, and Alexandria are said to be depressed by water compelled rates to New Orleans and Vicksburg. The first four class rates to these points from St. Louis, Chicago, Appleton, and St. Paul range from 111 per cent to 139 per cent of the rates to Fort Smith. The 90-cent commodity rate on cheese from Appleton to Texarkana, Shreveport, and Alexandria is 108 per cent of the 83-cent commodity rate to Fort Smith, and is therefore but slightly below the relation maintained between the class rates.

Fort Smith lies between Joplin on the north and Texarkana on the south. To the northwest in the state of Kansas is Wichita, and to the west in the state of Oklahoma are Muskogee and Oklahoma City. From Appleton these points are distant 840, 897, and 988 miles, respectively; and the rates on cheese are 81½ cents, 90 cents, and \$1, which do not compare unfavorably with the 83-cent rate to Fort Smith, a distance of 883 miles.

From Appleton to Muskogee the first four class rates are 90 to 98 per cent of the class rates to Fort Smith. The cheese rate of 90 cents to Muskogee is, however, 108 per cent of the 83-cent rate to Fort Smith. Muskogee is but 104 miles west of Fort Smith and in active competition therewith. It is therefore apparent that in the rate relation on cheese the advantage is with Fort Smith.

From Appleton to Wichita the first four class rates are 82 to 88 per cent of the rates to Fort Smith. The cheese rate of 81½ cents to Wichita is little less than 98 per cent of the 83-cent rate to Fort Smith. Here also the advantage in relation is with Fort Smith.

From Appleton to Oklahoma City the first four class rates are 104 to 112 per cent of the rates to Fort Smith. The rate of \$1 on cheese to Oklahoma City is, nevertheless, 120 per cent of the 83-cent rate to Fort Smith. Obviously there is no disadvantage to Fort Smith in this comparison.

The general rate relation of Fort Smith to the points selected for comparison is not complained of in this case, and may therefore be presumed to be reasonable. Using these comparisons as a test, it is amply shown that the advantage in cheese rates is rather with than against Fort Smith.

Upon the whole record we find and conclude that the rates complained of are not unreasonable and that the complaint must be dismissed.

Orders will be entered in conformity with these conclusions.

**SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF STOCK
IN SACRAMENTO TRANSPORTATION COMPANY.**

No. 6648.

**APPLICATION OF SOUTHERN PACIFIC COMPANY AND
CENTRAL PACIFIC RAILWAY COMPANY, UNDER THE
PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE
COMMERCE AS AMENDED BY THE PANAMA CANAL ACT,
RELATIVE TO THE SACRAMENTO TRANSPORTATION
COMPANY.**

Submitted November 7, 1914. Decided July 2, 1915.

Upon application of the Southern Pacific Company and the Central Pacific Railway Company, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which the operation of the Sacramento Transportation Company, in which petitioners own stock, may be continued, *Held*:

1. That the Southern Pacific Company does compete for traffic with the transportation company in its operation on the Sacramento River and connecting waters within the meaning of the act.
2. That the operation of the boat line is in the interest of the public and of advantage to the convenience and commerce of the people; that its continued operation by the transportation company, in which petitioner is interested through ownership of stock, will neither exclude, prevent, nor reduce competition on the route by water, and that a continuance of such operation should be permitted.

F. H. Wood and H. C. Booth for Southern Pacific Company and Central Pacific Railway Company.

Seth Mann for San Francisco Chamber of Commerce.

G. J. Bradley for Merchants & Manufacturers' Traffic Association of Sacramento.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This is an application, filed February 27, 1914, by the Southern Pacific Company and the Central Pacific Railway Company, under section 5 of the act to regulate commerce as amended by the Panama Canal act, in which relief in connection with the operation of the Sacramento Transportation Company is sought.

The Southern Pacific Company, hereinafter referred to as the petitioner, controls and operates a system of railroads, including lines in the state of California. The Central Pacific Railway Company owns railroad lines which are leased to petitioner.

Petitioner owns a majority of the stock of the Central Pacific Railway Company, which, in turn, owns 1,600 shares of the capital stock of the Sacramento Transportation Company, hereinafter referred to as the transportation company, of the par value of \$160,000. The total outstanding stock of the transportation company consists of 6,200 shares.

The transportation company owns and operates a line of steamboats on the Sacramento River and connecting waters within the state of California. It was incorporated in May, 1882, at which time it acquired the properties of the Sacramento Wood Company, a corporation organized in May, 1866, valued at \$230,000. This property consisted of the boats, a brickyard, and other property of minor importance. The consideration for the purchase was 4,600 shares of the capital stock of the transportation company on the basis of 50 per cent of its par value, which was \$100 per share. About the same time the Central Pacific Railway Company acquired 1,600 shares of this stock, also issued on the basis of 50 per cent of its par value, in payment for certain boats sold by it to the transportation company. In 1900 the directors passed a resolution declaring that the stock had been fully paid and indorsements to this effect were made on the certificates.

The present stockholders of the transportation company are, with the exception of the Central Pacific Railway Company, the heirs of the founders of the Sacramento Wood Company. The last dividend paid by the transportation company was in 1903, and its stock has no market value.

The issues presented are: Do or may petitioner's rail lines compete for traffic with the boats of the transportation company, and if so, will the continued operation of the boats in which the petitioner has an interest be in the interest of the public and of advantage to the convenience and commerce of the people and neither exclude, prevent, nor reduce competition on the route by water?

The petitioner operates rail lines between Sacramento and San Francisco. It also has a line paralleling the river between Colusa and Princeton, Cal., a distance of 14 miles, which at the time of the hearing had not been turned over to the operating department. A further extension of this line to Hamilton City, Cal., is proposed.

The transportation company has 8 steamers and about 24 barges. It operates from San Francisco and points on the bay to the head of navigation on the river, which at low-water season is Chico Landing, a distance of 273 miles, or 148 miles above Sacramento. The up freight consists of general merchandise and lumber to Sacramento and all landings on the Sacramento River above Sacramento. Down freight consists of grain and other products of the soil, moved to

tidewater at Port Costa and San Francisco. Practically all the down freight comes from points above Sacramento, with the exception of quite a volume of brick from the brickyard about 5 miles below Sacramento. Some brick is also moved from this yard to Sacramento to be disposed of there or to be reshipped by rail to interior points. There are approximately 170 landings above Sacramento, 8 of which are owned by the transportation company. To all points above Colusa a weekly service, and between San Francisco and Sacramento and Colusa a biweekly service, was maintained prior to 1911. Since that time triweekly trips are made between San Francisco and Sacramento, exclusively for the handling of freight.

The freight is transported principally in barges. Owing to conditions prevailing on the upper Sacramento River it is necessary to navigate in the busy season in less than 30 inches of water and consequently to use barges. In transporting freight between San Francisco and Sacramento three and four barges are used in a tow. The boat that leaves San Francisco with barges in tow operates to Sacramento, from which point the barges are towed by an up-river steamer that draws less water.

Some oil also is transported from Oleum, Cal., situated between Port Costa and San Francisco, to San Francisco.

The transportation company engages in no through business with rail lines, its traffic being confined to the Sacramento River and connecting waters, wholly within the state of California.

The Farmers Transportation Company, which operates a packet boat for freight only, is the only other regular boat line on the upper river. This boat makes weekly trips between San Francisco and Sacramento and Colusa. There are also several lines operating irregularly in competition with that of the transportation company. In years prior to and up to 1902 approximately 130,000 tons of grain were shipped each year via the transportation company's boats. Within the past three or four years a total of 160,000 tons of grain has been so transported from the landings above Sacramento to San Francisco. The decrease in the tonnage is accounted for by the fact that the farmers have engaged in more diversified farming, the land having been irrigated and divided into small ranches. The normal tonnage of brick is approximately 30,000 tons a year. For the year 1913 the transportation company transported approximately 200,000 tons of freight, of which one-half was from above Sacramento.

The rail rates from points north of Sacramento to Sacramento are generally higher than the rates via the boat line. From Princeton north to Chico Landing no railroad now touches the river, so that if boats were not operated on that portion of the river the farmers, in order to get their crops to market, would be obliged to haul them

from the river to points on the rail line, distances of from 6 to 20 miles.

No one appeared in opposition to the petition. The San Francisco Chamber of Commerce appeared by its attorney and the Merchants & Manufacturers' Traffic Association of Sacramento by its traffic manager, but introduced no evidence.

Upon consideration of all the facts of record, we are of opinion, and find, that the petitioner does compete for traffic with the boats operated by the transportation company within the meaning of the act; that the operation of the boats of the transportation company in which petitioner is interested through ownership of stock is in the interest of the public and of advantage to the convenience and commerce of the people; and that a continuance of such operation will neither exclude, prevent, nor reduce competition on the route by water under consideration. An order will be entered permitting a continuance of such operation, subject to such further order or orders as may hereafter be entered by the Commission.

84 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 520.
**RATES ON LUMBER FROM SOUTHERN POINTS TO THE
OHIO RIVER CROSSINGS AND OTHER POINTS.**

Submitted April 26, 1915. Decided July 12, 1915.

1. Proposed increased rates on yellow-pine lumber from the southwestern blanket to St. Louis, Mo., and East St. Louis, Thebes, and Cairo, Ill., not shown to be reasonable.
2. The evidence of record does not show that the rates from Little Rock, Ark., and Pine Bluff, Ark., should be increased to the blanket basis.
3. Proposed increased rates on hardwood lumber to St. Louis and Cairo from the territory embraced in the yellow-pine blanket not shown to be reasonable, but increase in the rates on hardwood to the level of the present rates on yellow pine justified.
4. Proposed increased rates on lumber, all kinds, from the territory north of the Arkansas River to St. Louis, East St. Louis, Thebes, and Cairo not shown to be reasonable.
5. Proposed increased rate on yellow pine from points on the Kansas City Southern Railway to St. Louis not justified.
6. Proposed basing rate to Thebes and Cairo from certain stations on the Memphis branch of the Chicago, Rock Island & Pacific Railway shown to be reasonable. Increases in the rates to Memphis from certain stations on this line also justified.
7. Proposed increased rates to Thebes and Cairo from certain stations on the Missouri & North Arkansas Railroad shown to be reasonable.
8. Cancellation of local rate to Cairo from points on the Texas & Pacific Railway not justified.
9. Proposed increased rates from stations on the Chicago, Rock Island & Pacific Railway to Louisville, Ky., and Cincinnati, Ohio, not shown to be reasonable.
10. Proposed increased rates on lumber, all kinds, to New Orleans, La., from groups of stations in the southwestern territory, not justified.
11. Increases not exceeding 1 cent per 100 pounds in the rates on lumber justified from Mississippi Valley territory and southeastern territory to the north bank Ohio River crossings in those instances in which such increases are necessary to effect a spread of 1 cent between opposite crossings. Proposed rates to St. Louis also shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.
12. Proposed increased rates to Ohio River crossings from points on the Texas & Pacific Railway, Vicksburg, Shreveport & Pacific Railway, and Southern Pacific system lines in Louisiana, shown to be reasonable.
13. The record shows that cottonwood and gum lumber are not entitled to lower rates than other hardwood lumber.
14. Proposed increased rates from Cincinnati, Ohio, to western termini and points in trunk line territory, not justified.

S. D. Snow for Wisconsin Lumber Company.

T. M. Henderson for Nashville Lumbermen's Club.

G. B. Webster for Ozark Cooperage Lumber Company, Mill Shoals Cooperage Company, Bolz-McBride Cooperage Company, Gideon Cooperage Company, and United States Stave & Handle Company.

G. F. Thomas for Arkansas Southern Manufacturers Association.

T. K. Riddick for Memphis Freight Bureau.

Andrews, Streetman, Burns & Logue and *R. H. Kelley* for Kirby Lumber Company.

J. V. Norman for Norman Lumber Company and New Albany Box & Basket Company.

W. A. Glasgow, jr., for Brooklyn Cooperage Company.

S. F. Andrews for Lumbermen's Exchange of St. Louis.

L. M. Walter, J. S. Burchmore, and *J. R. Walker* for other protestants.

S. H. West, E. A. Haid, F. H. Wood, W. F. Dickinson, H. G. Herbel, Thomas Bond, J. M. Souby, C. S. Burg, T. J. Freeman, and *Fred G. Wright* for southwestern lines.

S. R. Prince, C. B. Northrop, and *A. M. Bull* for Southern Railway Company in Mississippi.

R. Walton Moore, C. D. Drayton, and *C. J. Rixey, jr.*, for southeastern and Mississippi Valley lines.

W. A. Northcutt for Louisville & Nashville Railroad Company.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company.

W. W. Collin, jr., and *D. P. Connell* for New York Central lines and Pennsylvania lines.

T. J. Norton and *J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Chairman:

This proceeding resulted from the filing and suspension of tariffs proposing to increase the rates on lumber and articles taking the same rates from the producing regions of the southwest, the Mississippi Valley, and the southeast to St. Louis, Mo., East St. Louis, Thebes, and Cairo, Ill., Memphis, Tenn., and the Ohio River crossings. The proposed increases average about 1 cent per 100 pounds, though in some instances, which will be detailed later, the proposed rates are several cents higher than the rates now in effect. The protestants are lumbermen, lumber associations, chambers of commerce, and similar organizations. The tariffs involved have been suspended by appropriate orders until July 28, 1915.

The territory of production involved in this proceeding may be more fully described as follows: (1) The southwestern territory, including part of Oklahoma, Missouri, and northern Arkansas, and the

territory embraced in the so-called southwestern yellow-pine blanket, bounded on the north by the Arkansas River, on the east by the Mississippi River, on the south by the Gulf of Mexico, and on the west by a line drawn through Kansas City, Mo., and Houston, Tex; (2) Mississippi Valley territory, described generally as the region lying east of the Mississippi River and on and west of the line of the Mobile & Ohio Railroad; (3) southeastern territory, embracing the states of Georgia and Florida, and parts of Alabama and Tennessee.

It should be stated at the outset that the methods of constructing through rates from the territories of origin to points in central freight association territory and trunk line territory are not uniform. From the southwest the local rates to the gateways are generally used also as proportional rates and are added to other local or proportional rates beyond the gateway to make the through rates. Rates herein are stated in cents per 100 pounds. The present yellow-pine rate from the blanket to Cairo, Ill., for example, is 16 cents, both local and proportional. The rate from Cairo to Chicago, Ill., is 10 cents, making a through rate of 26 cents. It is important to observe that the southwestern lines propose to increase only the local rates to the gateways, and that they expressly disclaim any present intention of increasing the through rates to points beyond the gateways. On the other hand, the Mississippi Valley lines and the southeastern lines, while they have not yet increased the through rates, state that it is their intention to do so if the proposed rates to the crossings are permitted to take effect. From Mississippi Valley territory to the consuming territory north of the Ohio River through rates are made by combination upon the Ohio River crossings, except in a few cases, and they are in some cases published as joint through rates. The only increases from Mississippi Valley territory involved in this proceeding, however, are the rates to the crossings, though witnesses on behalf of the Mississippi Valley lines stated that if the proposed increases were allowed there would be a corresponding readjustment of the joint through rates.

From southeastern territory there is a dual system of rates, one set being the rates to the crossings proper and the other the proportional or basing rates. The same increases are proposed in both, but as yet no change has been made in the through rates, though these lines also state that their through rates will be revised if the increases here proposed are permitted to become effective.

PROPOSED INCREASES FROM THE SOUTHWEST.

From the southwestern yellow-pine blanket the respondents propose an increase of 1 cent in the blanket rates on yellow pine and cypress to Thebes, Cairo, St. Louis, and East St. Louis. Similar increases are proposed in the rates on hardwood, except that the

increases are greater than 1 cent in those instances where the present rates on hardwood are less than the rates on pine. In most cases the proposed rates on the hardwoods are the same as the proposed rates on yellow pine. Increases are also proposed in the rates on all kinds of lumber from stations in Arkansas north of the Arkansas River to the gateways named. Numerous other increases from this territory are proposed and will be discussed later.

THE HISTORY OF THE RATES IN QUESTION.

The history of the rates on lumber from the producing territories both east and west of the Mississippi River has played a prominent part in this proceeding. It has been used principally by the carriers to show that the rates in question were the result of the strongest competitive influences, and by the shippers to show that they have been increased from time to time until they now yield a reasonable remuneration.

The record shows that the production of yellow-pine lumber west of the Mississippi River began in the so-called Grandin-Leeper district in the southeastern part of Missouri. At that time the white pine of the north moved in considerable volume to St. Louis and Kansas City. When the producers of yellow pine in Missouri endeavored to market their product in St. Louis and Kansas City they found the consumers prejudiced against yellow pine and southern lumber generally. In order to stimulate the production of yellow pine the carriers made the same rates from Grandin to Kansas City, and from Leeper to St. Louis, as were in effect from Chicago to the same points on white pine, 15 cents and 8 cents per 100 pounds, respectively. Later the production of yellow pine extended south of the Arkansas River, and the rate from this territory to St. Louis was made 7 cents higher than the Grandin-Leeper rate, or 15 cents. The rate to Thebes and Cairo was made only 2 cents under the St. Louis rate, this being the differential maintained by the lines operating on the east side of the river. The rate to Thebes and Cairo from the territory south of the Arkansas River thereby became 13 cents. As the center of production extended southward the 13-cent rate to Cairo and the 15-cent rate to St. Louis were likewise extended southward beyond the Arkansas-Louisiana state line as far as Shreveport on the St. Louis Southwestern and Monroe on the St. Louis, Iron Mountain & Southern. From territory still farther south in Louisiana and Texas the rate to St. Louis and Cairo was 22 cents. In 1899 the 13-cent and 15-cent rates to Cairo and St. Louis, respectively, were increased 1 cent, making the rate to Cairo 14 cents and to St. Louis 16 cents, while the 22-cent rate from southern Louisiana and Texas was reduced to 16 cents to Cairo and 18 cents to St. Louis. In 1903 the

rates from the territory south of the Arkansas River were increased to 16 cents to Cairo and 18 cents to St. Louis, so that the rates of 16 cents and 18 cents applied as blanket rates from all territory between the Arkansas River and the Gulf of Mexico. The blanket thus created is about 400 miles long and 300 miles wide.

In *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323, decided May 4, 1909, producers of yellow pine in Arkansas and northern Louisiana alleged that the increase of 2 cents in the rates from their territory, made by the carriers to create the blanket, were unreasonable and unjustly discriminatory. We found that the rates were not shown to be unreasonable, that the evidence of record did not warrant any disturbance of the blanket adjustment, and that transportation conditions west of the Mississippi River were sufficiently different from those east of the river to warrant higher rates from the southwest than from the southeast.

In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220, decided May 6, 1912, formal complaint was made against a further increase in the rate to St. Louis to 19 cents. We held, however, considering the average haul to St. Louis from the blanket to be 565 miles, that the rate was not unreasonable, and the complaint was dismissed. Since that time the blanket rates on yellow pine have been 16 cents to Cairo and 19 cents to St. Louis. In *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33, decided January 12, 1915, producers of lumber located in Arkansas south of the Arkansas River filed a complaint in which they alleged that the rates from the northern part of the blanket to the gateways were unreasonable and unjustly discriminatory, and prayed that the blanket be divided at the Arkansas-Louisiana state line. We held that the evidence of record failed to show that the rates were either unreasonable or unjustly discriminatory, and that the division of the blanket in the particular manner suggested by the complainants was impracticable. The complaint was dismissed.

The principal reasons given by the southwestern lines for the increases are these: (1) They need more revenue; (2) the rates are unusually low, having been made for the purpose of aiding an industry which was struggling to overcome the prejudices against it and market its product in competition with other woods; (3) the prejudice no longer exists and competition is almost a thing of the past; (4) water competition, which originally influenced the rail rates, is now negligible.

THE FINANCIAL CONDITION OF THE SOUTHWESTERN LINES.

Protestants and respondents have vied with each other in exhibiting the financial weakness of their respective industries, and a large portion of the record consists of testimony purporting to show, on

the one hand, that nothing can save some of the respondents from receiverships if the proposed increases are denied, and on the other that any increase in freight charges would wipe out completely the small margin of profit upon which the producers and shippers of lumber are now operating. The record shows that for more than a year there has been an unusual depression in the lumber business; that the demand for lumber has decreased decidedly; that many mills have been forced to close down, and that those which have continued to operate are doing so either at a loss or with small returns. On the other hand, the respondents show that their expenses have increased so rapidly, while the transportation charges have remained stationary, that a number of them are in the hands of receivers and others in poor financial condition.

A consolidated statement, filed on behalf of 26 southwestern lines, shows that from 1903 to 1914 their operated mileage increased from 24,897 miles to 34,012 miles, and that their total operating revenue increased during the same period from \$166,516,598 to \$287,116,009. In spite of this material growth in the size of the roads and in their gross revenue, the net operating income decreased during the same period from \$45,269,265 to \$44,174,782, the average net operating income for the whole period being only \$48,936,513. The ratio of net operating income to property investment account of these roads in 1903 was 4.78 per cent, while in 1915 it had fallen to 2.84 per cent. Our attention is especially directed to the fact that the average ratio of net operating income to property investment account of these lines for this period was 3.78 per cent, while it was shown in the *Five Per Cent case*, 32 I. C. C., 325, at page 343, that for approximately the same period the average ratio of net operating income to property investment account for 35 railway systems in official classification territory was 5.41 per cent.

The increase in operating expenses is said to be due, among other things, to numerous laws enacted by the states and the federal government which made it necessary for these carriers to increase the number of their employees, shorten the hours of labor, and make heavy expenditures for safety appliances. It further appears that the scale of wages has risen materially since 1903. An exhibit filed by the southwestern lines shows that if the scale of wages in 1914 had been the same as in 1903 the amounts paid for wages during the last fiscal year would have been \$20,000,000 less than they actually were. Other exhibits filed on behalf of these respondents show that their operating income per mile of road decreased from \$2,414.81 in 1907 to \$1,795.02 in 1914, and they estimate that they are now earning 6 per cent on a valuation of \$15,364.16 per mile of road.

It seems fairly to appear from the evidence that the southwestern lines, taken collectively, are not prosperous. It does not necessarily

follow, however, that they should get all or any of the additional revenue by means of an increase in the rates on lumber, for it may be that lumber is at present contributing its fair share of revenue.

PROPOSED INCREASES IN YELLOW-PINE BLANKET RATES.

The most important increases west of the Mississippi River are those proposed in the rates on yellow-pine lumber from the blanket to St. Louis, East St. Louis, Cairo, and Thebes. The present and proposed rates are, to St. Louis and East St. Louis, 19 cents and 20 cents; and to Thebes-Cairo, 16 cents and 17 cents.

The record sustains the respondents' contention that the competition with white pine from the north has almost, if not quite, disappeared. The contest between yellow pine and white pine which began in the eighties has ended in an almost complete victory for yellow pine. *Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co.*, 33 I. C. C., 360.

An exhibit was filed by respondents showing the number of cars of yellow pine moving from the blanket to St. Louis, East St. Louis, Cairo, and Thebes during six alternate months, beginning with November, 1911, and ending with September, 1912. The exhibit, which is here reproduced, shows also the actual weight of the shipments during that period, the revenue which would accrue under the proposed rates, the tons hauled 1 mile, the average weight per car, and the average revenue per ton-mile under the proposed rates:

Consolidated statement showing movement of yellow-pine lumber from so-called blanket rate territory to destinations shown.

[This exhibit was prepared from abstract sheets furnished in connection with I. C. C. Docket No. 4907 and represents total actual movement to destinations shown for months of November, 1911, January, March, May, July, and September, 1912, from all roads (I. C. R. R. and M. & N. A. R. R. excepted) listed as defendants in that docket, the revenue shown being on the basis of the suspended rates under consideration in this case.]

From—	Number of cars.				
	1 line.	2 lines.	3 lines.	4 lines or more.	Total.
St. Louis proper.....	1,334	2,876	567	320	5,100
East St. Louis proper, also Venice, Madison, Granite City.....	417	782	128	19	1,350
Cairo proper.....	81	851	205	4	1,141
Thebes proper.....	7	264	84	2	357
Total.....	1,899	4,773	961	354	7,977

From—	Weight.	Revenue.	Tons 1 mile.	Average weight per car.	Average haul per ton.	Average revenue per ton-mile.
St. Louis proper.....	Tons. 121,094	\$484,336.00	84,357,796	Tons. 22.48	Miles. 690.09	Miles. 8.761
East St. Louis proper, also Venice, Madison, Granite City.....	32,157	128,549.00	21,801,000	22.75	678.38	8.498
Cairo proper.....	27,073	92,057.07	16,467,265	22.78	608.21	8.368
Thebes proper.....	7,098	26,173.90	4,444,310	21.40	377.29	8.368
Total.....	187,994	731,114.97	127,070,391	22.57	675.93	8.784

The respondents call our attention particularly to the fact that the average haul from the blanket is steadily increasing as the center of production moves southward, and advance that fact as one justification for the proposed increases. In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, *supra*, we accepted the average distance of 565 miles given by the complainant, and held that the rate of 19 cents, yielding a revenue of 6.72 mills per ton-mile, was reasonable. The respondents compare that revenue per ton-mile and that distance with those shown in the above table and reach the conclusion that the comparison tends to establish the reasonableness of the proposed rates.

The fact that the average haul increases in length as the timber is cut away in the northern part of the blanket can not be accepted as a justification for continual increases in the blanket rate. The blanket was voluntarily created by these respondents. Originally the center of production was considerably farther north than it is now, and for that reason the carriers profited by the relatively short hauls from the blanketed area; and to that extent also the shippers operating in the northern part of the blanket, where the production was heaviest, were at a disadvantage in having to pay for their relatively short hauls a blanket rate which covered a vast territory. When shippers in the northern part of the blanket complained of their rates the carriers were prompt to reply that the reasonableness of the blanket rate must not be gauged by the short distances from the complainants' mills, and that in any group system of rates distance must necessarily be disregarded. Obviously the rule should work both ways. The carriers having disregarded distances of several hundreds of miles in creating and maintaining the blanket, they should not be heard to say that the gradual southward movement of the center of production is in itself a justification for an increase in the blanket rate. Moreover, under these circumstances comparisons of ton-mile earnings do not have the significance or the value which they ordinarily have. We can not agree, therefore, that our conclusion in the *St. Louis Lumbermen's case* establishes the reasonableness of the suspended rates.

It is shown on behalf of the respondents that the rates in question were made under the strongest competitive influences; that the competition of water lines was at first severely felt and reflected in the rates; and that "water competition is not the bugaboo to railroad men that it formerly was." It is especially urged on behalf of the carriers that the rates originally established were "missionary" rates, made to enable a struggling industry to establish itself, and that inasmuch as the lumber industry is no longer in its infancy there is no further need of continuing the low rates.

This argument loses sight of the fact that the rates in question have been raised from time to time. We have already pointed out that the rate to St. Louis from the northern part of the blanketed territory was originally 15 cents, whereas it is now 19 cents, and it is proposed to increase it to 20 cents by the suspended tariffs. If the fact that a rate was originally established under strong competitive influences is to be accepted as alone sufficient to prove the reasonableness of an increase in the rate, it must obviously be true that the respondents could justify any number of successive increases in a rate simply by referring to its history. Furthermore, the elimination of the competitive conditions is not the only change in conditions which has occurred since the establishment of the low rates. The respondents' own testimony shows, for example, that the mileage owned and operated by them has increased substantially 50 per cent since 1903. Lumber moves in much greater volume to-day than it did in the early days. Weak railroads which originally operated under the most trying conditions have been purchased by stronger lines and consolidated into great systems, and in various ways transportation economies have been effected.

The respondents have vividly depicted the unusual difficulties incident to operating the lines west of the Mississippi River. We are told that a number of the lines traverse the lowlands adjoining the Mississippi River, and that they are frequently subject to overflow. Floods are frequent, bridges are destroyed, and the expense occasioned by damage to roadbed and trestles by the swelling of small streams is said to be enormous. We are told that the rivers change their channels; that an expensive bridge is built to-day, only to find to-morrow that the river is no longer there; and that such a prominent line as the Rock Island has "had to drive piling, anchor the tracks, tie them to trees, and resort to other methods" to keep its tracks and roadbed from being washed away.

We have recognized in previous cases the difficulties which the lines west of the Mississippi River encounter, and for that reason we approved in the *Chicago Lumber & Coal case, supra*, rates somewhat higher from the southwest territory than those in effect from the territory east of the river, where the operating conditions are admittedly better. It does not appear that operating conditions to-day are any worse west of the river than they have been, and there would therefore seem to be no reason for holding that the operating difficulties constitute a justification for the proposed rates. It appears, on the other hand, that the territory west of the Mississippi River has developed to a marked degree since 1903. Not only have the respondents' lines increased in size and in strength, but the population and tonnage have increased.

The fact that the respondents are not in good financial condition can not be held to justify the proposed rates. It is a matter of common knowledge that lumber is a low-grade commodity, and that from a transportation point of view it is one of the most desirable commodities. Ordinarily it yields large returns to the carriers. Nothing appears of record in the present case to convince us that the present rates from this territory are in any respect unremunerative or that the carriers' revenues should be replenished by an increase in the rates on yellow-pine lumber.

The respondents show that commendable efforts have been made by some of them to conserve their revenues, with gratifying results, and the St. Louis & San Francisco Railroad is chosen as typical. It is shown that during the period beginning June 30, 1913, and ending November 30, 1914, that carrier, by increasing its trainloads, reducing the amounts paid for loss and damage, reclaiming scrap material, and in numerous other ways, effected a saving of \$931,526. The extent to which the other carriers in the southwest have been able to conserve their revenues is not shown of record, but the evidence just detailed suggests that it is possible to better materially the financial condition of these lines without an increase in the rates on lumber.

Considerable emphasis is laid by the respondents on the fact that the proposed blanket rate of 20 cents to St. Louis compares favorably with the present rate of 24 cents to Kansas City, Mo. We do not think this comparison controlling. The respondents' evidence shows that the reasonableness of the St. Louis rate must be gauged in the light of its peculiar history. The record does not show that the competition at Kansas City is so severe as the competition at St. Louis. Moreover, we have never passed upon the reasonableness of the 24-cent rate to Kansas City.

We are of opinion and find that the proposed increased rates on yellow pine from the blanket territory to St. Louis, East St. Louis, Thebes, and Cairo have not been shown to be reasonable.

PROPOSED INCREASES FROM LITTLE ROCK AND PINE BLUFF TO MEMPHIS.

The blanket rate to Memphis is 14 cents. In *Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 391, decided May 2, 1910, the complainant, a manufacturer of lumber at Woodson, Ark., alleged that the rate of 14 cents from Woodson and Little Rock to Memphis was unreasonable. The evidence taken in that case showed that for many years the Little Rock & Memphis Railway was the only line connecting Little Rock and Memphis, and that until the construction by the St. Louis, Iron Mountain & Southern Railway of a line between those points the published rate from Little Rock to

Memphis was 8 cents, though most of the lumber moved at special rates, which were even lower. In 1903 the rate on pine was increased to 10 cents, in 1907 to 12 cents, and in 1909 to 14 cents, the rate attacked in the case cited. The defense was that the matter was *res adjudicata*, the Commission having approved the blanket adjustment in the *Chicago Lumber & Coal Co. case, supra*. We observed, however, that our approval of the blanket in the case cited was expressed with an important qualification, as follows:

Unless necessary to the correction of rates found to be excessive and unreasonable from a part of the territory, we see no reason, under all the circumstances appearing, for interference in the present adjustment.

Commenting upon this qualification we said, at page 393:

This language expressly disclaims any intention of precluding a shipper located within the territory covered by the adjustment from bringing his complaint against particular rates alleged to be unreasonable. If such a complaint is made, it becomes the duty of the Commission to investigate the same and determine the reasonableness of the rates assailed. It may be generally true that a system of blanket rates from a producing section is fair and just to all parties concerned, although it necessarily involves rates that are somewhat high for the distance from points on the edge of the blanket nearest the points of destination, but in making such an adjustment the burden rests upon the carrier to provide rates that shall not be unreasonable from any point of origin.

The contention that any change in the rates involved in this complaint will disrupt the established adjustment is hardly a reasonable deduction from the facts disclosed. Little Rock and Woodson have not been included in this adjustment for any considerable period of time. They were, as a matter of fact, for many years on the southern edge of a zone with a rate of 8 cents to Memphis. They were subsequently transferred to the northerly edge of a zone extending from the Arkansas River to the Gulf of Mexico, and at approximately the same time the rate from this southern zone was increased. The net result of the readjustment gave to the points in question in rapid succession two material increases in rates which carried them up from 8 to 14 cents, and the record shows that complainant was the principal shipper affected thereby.

We also compared the rate of 14 cents with a rate of 9 cents in effect from stations immediately north of Little Rock, and concluded "that the present rate on lumber from Little Rock and Woodson is unreasonably high for such a low-class traffic as lumber." We prescribed a maximum rate of 10 cents.

In *Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 464, the rate of 14 cents from Pine Bluff to Memphis was also assailed. We held, for reasons similar to those given in the *Ferguson case, supra*, that it was unreasonable to include Pine Bluff within the blanket, and prescribed a rate of 11 cents as a maximum rate on yellow pine from Pine Bluff to Memphis.

In the present proceeding the respondents propose to reinstate Little Rock and Pine Bluff in the blanket by advancing the rates from both points to 14 cents. The reasons given for the proposal

are, first, that the Arkansas River constitutes a natural and logical northern boundary for the blanket; second, that there are mills located at points near Little Rock and Pine Bluff, such as Perla, Bigelow, Malvern, Clio, and Benton, Ark., which get their timber from the same general region as the Little Rock and Pine Bluff interests, and that inasmuch as the blanket rate applies from these other points the present adjustment gives Little Rock an unfair advantage; third, the 9-cent rate from points north of Little Rock, used by the Commission as a basis for comparison, applied not only from McAlmont and Galloway, Ark., the two points to which the Commission referred, but to a group of stations, the average distance from which to Memphis is 100 miles and the average revenue per ton-mile 18 mills, whereas the Commission considered only the actual distances of 141 miles and 124.5 miles from McAlmont and Galloway to Memphis. Respondents say in their brief:

From a reading of the opinion of the Commission in the *Ferguson case, supra*, it appears that that decision was based wholly on the fact that from Galloway, which is about 9 miles east of Little Rock on the Rock Island, and from McAlmont, which is about 7 miles north of Little Rock on the Iron Mountain, both being outside of the natural boundaries of the blanket, the rate to Memphis was 9 cents. This, however, is not an unusual situation.

A fair reading of our report in the *Ferguson case* will show that our opinion in that case was not based wholly, or even principally, on the fact that a rate of 9 cents applied from Galloway and McAlmont.

The contention that the Arkansas River constitutes a natural line of demarcation between the blanketed territory and the region to the north from which lower rates are published to the gateways is not without merit. We gave consideration to this matter in the *Ferguson case*, however, and there reached the conclusion that the blanket was not to be deemed so inviolable as to preclude a shipper from bringing into issue the reasonableness of particular rates. The respondents' unconcealed apprehension that the maintenance of lower rates from these points will lead to further demands for similar rates does not prove that the present rates are not reasonably high. Their contention that undue discrimination will result if the rates from points south of the Arkansas River are not made uniform is weakened by the fact that the adjustment which they propose in the rates on hardwood provides rates lower than the blanket rate from a number of points immediately south of the Arkansas River. Our conclusion in the *Ferguson case* was that the rate of 14 cents from Little Rock to Memphis, a distance of 148 miles, yielding a revenue of 19 mills per ton-mile, was unreasonable. There is nothing in the record in the present case which would warrant a reversal of that

finding. What has been said with reference to the rate from Little Rock to Memphis applies with equal force to the rate from Pine Bluff. We therefore find that the proposed rate of 14 cents from these points to Memphis has not been shown to be reasonable.

PROPOSED RATES ON HARDWOOD FROM THE YELLOW-PINE BLANKET.

The rates on hardwood from a large part of the territory embraced in the yellow-pine blanket have for years been somewhat less than the rates on yellow pine. From the northern part of Louisiana the rate on hardwood has been generally 2 cents less than the yellow-pine rate. From western and southeastern Arkansas the differential has been generally 3 cents. In *Northbound Rates on Hardwood*, 32 I. C. C., 521, decided January 12, 1915, the southwestern lines proposed various increases in the hardwood rates for the purpose of bringing them up more nearly to the yellow-pine basis. In our report in that case we permitted the proposed increases, with a few exceptions. The general effect of our conclusions was to make the rates on hardwood the same as the rates on yellow pine from practically all points in Louisiana and points in the southwestern part of Arkansas. The protestants petitioned for a reconsideration of the matter, and it was further argued in conjunction with the present case. In our supplemental report, 34 I. C. C., 708, we adhered to our original conclusions. In the present case the respondents propose to increase all rates on hardwood from the blanket as far north as Malvern, Draughton, and Arkansas City, Ark., to the proposed yellow-pine blanket basis, 20 cents to St. Louis, and 17 cents to Thebes and Cairo. The proposed rates on hardwood from the territory north of Malvern, Draughton, and Arkansas City as far as the Arkansas River are 2 cents lower than the proposed blanket rates and 1 cent below the blanket rates now in effect.

As a result of our conclusions in *Northbound Rates on Hardwood*, *supra*, the blanket rates were applied to hardwood as far north as the Arkansas-Louisiana line from Junction City, Ark., east, and to a large territory in southwestern Arkansas and eastern Texas. The tariffs suspended in the present proceeding contain increases which will have the effect of extending the application of the blanket rate as far north, generally speaking, as the Malvern-Draughton-Arkansas City line.

We have held earlier in this report that the respondents have not justified the proposed increased rates of 17 cents and 20 cents on yellow pine from the blanket territory to Thebes-Cairo and St. Louis, respectively. As there appears to be no reason for allowing higher rates on hardwood than on yellow pine, we also find that the proposed rates of 17 cents and 20 cents on hardwood have not been

shown to be reasonable. There remains to be considered the question whether the 19-cent blanket rate should be extended northward in the manner indicated in the preceding paragraph. In our reports in *Northbound Rates on Hardwood, supra*, we considered the protestants' objections to the proposed increases and held that there is no reason, from a transportation viewpoint, why the rates on hardwood should not be as high as the rates on yellow pine. The protestants' principal contention, that the average length of haul from the blanket is considerably shorter for hardwood than yellow pine, has been considered in our supplemental report in the case cited, in which we held that the difference in distance was not sufficient to warrant us in making a difference in the rates compulsory. The same reasoning applies with greater force in considering the proposed increases in the rates on hardwood from the northern part of the blanket, for from this territory the hauls on yellow pine and hardwood are of practically the same length. We are therefore of opinion and find that the proposed increases in the rates on hardwood from the territory embraced in the so-called yellow-pine blanket to St. Louis, East St. Louis, Thebes, and Cairo have been shown to be reasonable to the extent that they do not exceed the present yellow-pine blanket rates to the gateways named. Protestants' contention that gum lumber should take lower rates than other hardwood will be considered later in this report.

PROPOSED INCREASES NORTH OF THE ARKANSAS RIVER.

We have already referred to the fact that the suspended tariffs propose to increase the rates on all kinds of lumber to St. Louis, East St. Louis, Thebes, and Cairo from the territory north of the Arkansas River. The increases are in some cases 1 cent and in others 2 cents. The proposed adjustment on the main line of the St. Louis, Iron Mountain & Southern is typical. Beginning at Delaplaine, located in the northeastern part of Arkansas a short distance south of the Missouri-Arkansas state line, the rates on all kinds of lumber from stations Delaplaine to Hoxie, inclusive, have been increased from 13 cents to 14 cents to St. Louis and East St. Louis and from 10 cents to 11 cents to Cairo and Thebes. From a group of stations immediately south of those last mentioned, Minturn to Tuckerman, inclusive, the rates to St. Louis and East St. Louis have been increased from 13 cents to 15 cents, and to Cairo and Thebes from 10 cents to 12 cents. Proceeding south toward the Arkansas River there are several other small groups from which the rates to the gateways named have been increased 2 cents. From the group of stations immediately north of the Arkansas River, Ward to Rixey Spur, inclusive, the proposed rate to St. Louis and East St. Louis is 18 cents,

and to Thebes and Cairo 15 cents, 2 cents higher than the present rates and 1 cent lower than the present rates from the yellow-pine blanket. Rates from stations on the White River branch of this road, which connects with the main line at Diaz, Ark., are increased 1 cent. The stations along this branch are grouped similarly to those on the main line. The first group after leaving the main line includes the stations from Reamy to Cushman, the rates from which have been increased from 15 cents to 16 cents and from 12 cents to 13 cents.

It is unnecessary to describe in detail the increases proposed by the other north and south lines in this territory, for they are similar to those on the St. Louis, Iron Mountain & Southern. On the Helena branch of the latter road, extending from Knobel to Helena, there are several groups of stations from which the proposed increases vary from half a cent to 3 cents. From Helena and West Helena it is proposed to increase the rates to St. Louis and Thebes-Cairo from 12 cents to 15 cents and from 10 cents to 13 cents, respectively. Increases averaging 2 cents have also been made on the Memphis, Helena & Louisiana division of the St. Louis, Iron Mountain & Southern, as well as from stations on the St. Louis Southwestern Railway from Dalby, in the northeastern part of the state, as far south as the Arkansas River. South of the Arkansas River the proposed rates are on the yellow-pine blanket basis, with the exceptions already noted.

The rates from stations on the St. Louis & San Francisco Railroad apply from small groups similar to those on the St. Louis, Iron Mountain & Southern. On the branch which runs through Poplar Bluff, Mo., to Hoxie, Ark., the rates on all kinds of lumber from stations Datto to Hoxie, inclusive, have been increased from 13 cents to 14 cents to St. Louis-East St. Louis, and from 10 cents to 11 cents to Thebes-Cairo. On the main line from St. Louis to Oklahoma, beginning at Wyandotte, Okla., and ending at Claremore, Okla., the rates on lumber, all kinds, have been increased 1 cent, the present rates being $17\frac{1}{2}$ cents to St. Louis and East St. Louis and $14\frac{1}{2}$ cents to Thebes. From stations Verdigris, Okla., to Sapulpa, Okla., the rate on hardwood is increased from $17\frac{1}{2}$ cents to $19\frac{1}{2}$ cents to St. Louis and from $14\frac{1}{2}$ to $16\frac{1}{2}$ to Thebes. From the same stations, which heretofore have taken the blanket rate on yellow pine, an increase of 1 cent is proposed in the yellow-pine rate. South of Sapulpa as far as Choctaw Crossing, which is just east of Oklahoma City, the rates on all kinds of lumber are on the yellow-pine blanket basis. On the Bentonville branch, and on the main line operating through Fort Smith, increases averaging 1 cent have been made. From certain stations south of Fort Smith the rates on hardwood have been increased to the blanket basis.

From what has been said it will be seen that north of the Arkansas River the rates are graded in small groups as the distance from the gateways increases, until the graded rates reach the yellow-pine blanket rate, which is thereafter observed as a maximum.

For the purpose of showing the actual weighted average hauls on hardwood lumber from the territory involved, and the revenue under the suspended rates, the respondents have prepared an exhibit giving the actual movement for six alternate months beginning with November, 1911, and ending with September, 1912. The exhibit is here reproduced in part:

Destination.	Number of cars.				Total.	Average haul per ton.	Average revenue per mile.
	1 line.	2 lines.	3 lines.	4 lines.			
St. Louis proper.....	1,611	248	6	2	1,867	Miles. 447.71	Mills. 7.840
East St. Louis proper.....	268	82	5	0	355	424.14	8.414
Cairo proper.....	850	189	17	6	1,062	365.71	8.470
Thebes proper.....	164	114	1	0	279	324.95	9.308

In order to establish the reasonableness of the rates from all the groups the respondents have compared the rate, distance, and revenue per ton-mile on traffic from each group, as shown in the above exhibit, with rates established by this Commission in other cases. For example, the exhibit shows that the 15-cent rate to St. Louis applies from a group of stations the average weighted haul from which to St. Louis is 330.14 miles and the revenue per ton-mile 9.09 mills. A table of cases is then given to show that higher rates have been approved by the Commission in other cases. A careful examination of this table, however, shows that the rates established therein applied in most instances between points where the volume of traffic is obviously less than that from this great producing territory to the gateways and an analysis of the cases referred to emphasizes the impropriety of accepting such comparisons as controlling. In the first rate relied upon by the respondents, *Gentry v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 171, it appeared that a joint through rate of 28½ cents had been in effect from Ashland, Tex., to Nash, Okla., and that it had been withdrawn by the carriers because of a dispute over divisions. No other reason having been given for the withdrawal of the rate we found that it should be reestablished. The fact that that rate yielded a ton-mile revenue of 11 mills is relied upon by the respondents. That this comparison is inapt is obvious. In *Pacific Coast Lumber Mfrs. Asso. v. N. P. Ry. Co.*, 14 I. C. C., 23, from which case the respondents have taken a number of ton-mile comparisons, neither the geographic conditions nor the traffic conditions were fairly comparable with those before us in the present case. It is

unnecessary to discuss the other comparisons made at great length by the respondents. It is sufficient to say that they are similar to those just detailed, and that they can not be accepted as proof of the reasonableness of the proposed rates.

We are of opinion and find that the proposed increased rates from the territory north of the Arkansas River and in Oklahoma to St. Louis, East St. Louis, Thebes, and Cairo have not been shown to be reasonable. The increases which have been made on the St. Louis & San Francisco Railroad and other roads for the purpose of aligning the hardwood rates with the present pine rates have been justified.

PROPOSED INCREASES FROM KANSAS CITY SOUTHERN POINTS.

The Kansas City Southern Railway proposes an increase of one-half cent in the rates to St. Louis on yellow pine and 1 cent on hardwood, beginning at Siloam Springs in northwestern Arkansas and extending as far south as Fort Smith. The rate on yellow pine now in effect from this territory to St. Louis and East St. Louis is the blanket rate of 19 cents, the proposed rate being $19\frac{1}{2}$ cents. The average distance from this group of stations to St. Louis via Kansas City is 555 miles, the 19-cent rate yielding a revenue per ton-mile of 6.84 mills. There are other routes by which the distance is somewhat less and the earnings per ton-mile consequently somewhat greater. The evidence does not show that the present rates are not sufficiently remunerative. Inasmuch as the proposed increased rate of 20 cents from the blanket as a whole to St. Louis has been held not justified and since there appears to be no reason why the rates from these Kansas City Southern points should exceed the blanket rate, we are of opinion and find that the proposed rate of $19\frac{1}{2}$ cents has not been shown to be reasonable. The proposed rates on hardwood have been justified in so far as they do not result in rates that exceed the present rates on yellow pine.

ROCK ISLAND BASING RATE TO CAIRO AND THEBES.

From stations on the Memphis branch of the Rock Island as far west as Galloway, Ark., there is at present a basing rate to Cairo and Thebes of 11 cents, used both as a local and as a proportional rate. It is now proposed to divide this group into two parts by increasing to 12 cents the proportional rate from stations Hazen, Ark., to Galloway, inclusive. The principal reason given by this respondent for the increase mentioned is that the St. Louis, Iron Mountain & Southern Railway formerly maintained from its stations north of Little Rock a basing rate of 11 cents to Thebes and Cairo which the Rock

Island was forced to meet. It is pointed out that the St. Louis, Iron Mountain & Southern has divided its 11-cent group into three parts, the rates from which vary from 11 cents to 13 cents, and that there is accordingly no reason for maintaining the 11-cent rate from the points in question. There appears to be no reason why the rates from these stations on the Rock Island should be lower than those on the main line of the Iron Mountain immediately north of Little Rock. The Rock Island has no line of its own to Cairo or Thebes, but reaches those points in connection with other lines, so that the movement in each case involves a two-line haul. The distances from the stations in question to Cairo vary from 257 miles to 298 miles, and under the proposed rate of 12 cents the revenues per ton-mile will be from 8.19 mills to 9.16 mills. This rate and these earnings compare favorably with other rates in the same general territory. We are therefore of opinion and find that the proposed rate has been shown to be reasonable.

ROCK ISLAND RATES TO MEMPHIS.

The Rock Island has also increased its rates on all kinds of lumber from certain stations on its Memphis division to Memphis. The stations affected are Cicalla, Ark., to Round Pond, Ark., inclusive, and Becks, Ark., to Brinkley, Ark., inclusive. The present rates from these stations are 5 cents and 6 cents, and the proposed rates 1 cent higher. This branch of the Rock Island is paralleled by the Marianna branch of the Iron Mountain. The latter road having increased its rates from stations on its Marianna branch to Memphis, the Rock Island now proposes a similar increase. Exhibits filed on behalf of this respondent show that the proposed rates are substantially the same for similar distances as the rates now in effect on other lines in this region. The record shows that a large part of the line of the Rock Island to Memphis is built on a fill and that the expense of maintaining the line is unusually heavy. It further appears that the Rock Island in reaching Memphis is required to absorb out of its rate a bridge toll of 1 cent per 100 pounds. We are therefore of opinion and find that the proposed rates have been shown to be reasonable.

PROPOSED INCREASES ON THE MISSOURI & NORTH ARKANSAS.

The line of this respondent traverses the state of Arkansas from the northwestern part of the state to Helena. In the eastern part of the state it is intersected by the Iron Mountain at Lexa, Ark., the Rock Island at Wheatley, Ark., the Cotton Belt at Fargo, Ark., and again by the Iron Mountain at Kensett, Ark. The local and proportional rate from Helena to Cairo is 10 cents, said to be depressed

somewhat by water competition and the competition of the east side lines. In order to prevent a violation of the fourth section the 10-cent rate has been applied as far north as Wheatley. It is now proposed to increase this rate to 11 cents, which is the present basing rate on all kinds of lumber from all stations north of Weatherby, Ark., as far as Searcy, Ark. The object of this increase is said to be to permit this respondent to obtain longer hauls on traffic originating at the stations in question.

In the past it was necessary for this carrier to turn traffic over to other lines at Wheatley or Lexa in order to avoid carrying it through territory taking higher rates. Under the proposed adjustment the 11-cent rate will apply from all stations Southland, Ark., to Searcy, Ark., inclusive, so that the Missouri & North Arkansas will be able to haul traffic originating on its line as far north as Kensett without deviating from the long-and-short-haul rule of the fourth section. There appears to be no reason for requiring this carrier to continue the application of the Helena rate from these stations. We therefore find that the proposed increase has been justified.

CANCELLATION OF CAIRO RATE FROM TEXAS & PACIFIC POINTS.

Prior to our decision in *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, decided March 3, 1914, the Texas & Pacific Railway, in connection with the St. Louis, Iron Mountain & Southern and the Illinois Central, published a rate of 16 cents on yellow pine to Cairo proper from points on its line located within the yellow-pine blanket. In the case cited we held that the defendants should be required to establish from southwestern points or groups substantially equidistant from Cairo and Paducah rates to the latter point no higher than the rates contemporaneously maintained from the same points of origin to Cairo. Subsequently to our decision in the *Paducah case* the St. Louis, Iron Mountain & Southern and the Illinois Central refused to join with the Texas & Pacific in establishing the same rates to Paducah as to Cairo. To show that this refusal was justified the respondents rely on *St. L., I. M. & S. Ry. Co. v. United States*, 217 Fed., 80, a case brought to enjoin the enforcement of our order in *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40. In the latter case we had held that the maintenance of higher rates on lumber and logs to Metropolis, Ill., than to Cairo, Ill., from equidistant points in certain territory east of the Mississippi River resulted in undue prejudice and disadvantage to Metropolis. We further held that from certain territory west of the Mississippi River the rates to Metropolis should not exceed by more than 1 cent per 100 pounds the rates to Cairo. An appropriate order was entered, with which all of the defendants complied except the St. Louis, Iron

Mountain & Southern Railway and the St. Louis Southwestern Railway. These carriers petitioned the United States district court for the eastern district of Illinois for an injunction against the enforcement of the order. The injunction was granted on the following grounds: (1) That the evidence before the Commission was not sufficient to support the finding of discrimination; (2) that neither the St. Louis, Iron Mountain & Southern Railway nor the St. Louis Southwestern Railway had direct lines to Metropolis, and inasmuch as they did not join with any other line or lines reaching that point in making joint through rates to Metropolis the maintenance of lower rates by the lines named to Cairo than to Metropolis could not be deemed unjust discrimination or undue preference within the meaning of the act; (3) that the Commission erred in matter of law in failing to give effect to the manifest fact that the Cairo rate in and of itself was abnormally low, due to competition of other trunk lines and to competition of other points of origin.

No order was entered in the *Paducah case*, but the respondents call to our attention the similarity between that case and the *Metropolis case*, and urge that because of the similarity it would be unjust to compel any of the respondents whose lines do not reach Paducah to reduce the rates to that point to the Cairo basis. They assert that it is impossible for them to raise the Cairo rate to the Paducah basis, because the Cairo rate is made by carriers which reach that point by a one-line haul.

The opinion of the United States district court in the case referred to was based principally upon the ground that neither of the petitioners therein had direct lines to Metropolis and that neither of them joined in joint through rates to that point. We find by reference to tariffs on file with the Commission that the Texas & Pacific Railway joins with the Illinois Central in a joint through rate from points on its line to both Paducah and Cairo. It follows that the Texas & Pacific Railway must be held responsible for any unjust discrimination against Paducah or any undue preference to Cairo.

It is further urged on behalf of the southwestern respondents generally that the 16-cent rate to Cairo was made by lines which have a single line from the points of origin to that gateway, and that it would be manifestly unjust for this Commission to compel such a line as the Texas & Pacific, whose traffic can not reach Cairo by a one-line haul, to continue the publication of the 16-cent rate to that point. Exhibits filed on behalf of the respondents, however, show that most of the lumber from the yellow-pine blanket moves to Cairo by two or more lines. It is shown that for six alternate months in 1911 and 1912 the total movement of yellow-pine lumber from the blanket to Cairo proper was 1,141 cars. Of this number

only 81 cars moved over a single line, 851 over two lines, 205 over three lines, and 4 cars over four lines. Of 7,977 cars moving from the yellow-pine blanket, as a whole, to St. Louis, East St. Louis, Cairo, and Thebes, more than one-half moved over two lines. The conclusion is inevitable, therefore, that the argument of the Texas & Pacific that it does not reach Cairo with its own line can not be accepted as conclusive evidence of the unreasonableness of the 16-cent rate.

Our attention is further called to the fact that the opinion of the federal court in the case cited was based also on the fact that the Commission erred in matter of law in failing to give effect to the fact that the Cairo rate was abnormally low because of competitive influences, and the respondents allege that the analogy between the situation at Paducah and that at Metropolis is sufficient to warrant a further conclusion that the Commission erred in matter of law in requiring an equalization in the rates to Cairo and Paducah. We do not understand that this is a necessary deduction from the facts, and nothing appears of record which would warrant us in reversing our conclusion in the *Paducah case*. We are therefore of opinion and find that the Texas & Pacific Railway has not justified the cancellation of its rate to Cairo.

It is further urged on behalf of the Rock Island, the Vicksburg, Shreveport & Pacific, and Morgan's Louisiana & Texas Railroad that considerations similar to those above set forth make it inequitable to require those lines to comply with our decision in the *Paducah case*, though the rates in the suspended tariffs are in compliance therewith. It is alleged that Paducah is not fairly comparable with Cairo, and that the Commission should recognize the natural advantages of Cairo. This evidence was before us when the *Paducah case* was decided, and nothing appears in the present record which convinces us that our conclusion should be changed.

INCREASES IN ROCK ISLAND RATES TO LOUISVILLE AND CINCINNATI.

In *Davis Bros. Lumber Co. v. C., R. I. & P. Ry. Co.*, 26 I. C. C., 257, producers of yellow-pine lumber at Ansley, Bernice, Dubach, and Wyatt, La., alleged that the rates on yellow-pine lumber from those points to Louisville, Ky., and Cincinnati, Ohio, were unreasonable and unjustly discriminatory as compared with the rates from competitive points on other lines in northern Louisiana. The rates assailed were 25 cents per 100 pounds to Louisville and 27 cents to Cincinnati. We held that the rates were unreasonable to the extent that they exceeded 21 cents to Louisville and 23 cents to Cincinnati. In complying with our order in that case the Rock Island made similar reductions in the rates, not only from intermediate stations, but

from branch-line stations and from points west of Little Rock. In the suspended tariffs it is proposed to increase these rates because of "the operating conditions under which the traffic is transported and the financial condition of the company."

From stations Walker Spur, La., to Eunice, La., it is proposed to increase the Louisville rate from 21 cents to 22½ cents and the Cincinnati rate from 23 cents to 25 cents. From stations Fitch, Ark., to Apex, Ark., the Louisville rate is increased from 21 cents to 21½ cents and the Cincinnati rate from 23 cents to 24 cents. The same increases are proposed in the rates from stations Milams, La., to Meridian, La. It is not proposed to increase the rates from the four points involved in the *Davis Bros. case*.

In support of the proposed rates this respondent, like the others, relies chiefly on comparisons of ton-mile revenues. It is shown, for example, that from the group of stations west of Little Rock the average distance to Louisville is 580 miles and the average revenue per ton-mile 7.4 mills. To Cincinnati the average distance is given as 695 miles and the revenue 6.9 mills. From the stations south of Meridian the average distances to Louisville and Cincinnati are 846 miles and 960 miles, respectively, and the earnings per ton-mile 5.3 mills and 5.2 mills. From stations Milams to Meridian the earnings are 5.4 mills and 5.3 mills. Cases are cited in which we have established rates yielding higher revenues per ton-mile for similar distances. There is no proof, however, that the conditions in the cases cited were similar to those in the present case, and the comparisons are therefore open to the objection that they assume that distance was the controlling consideration in all the cases. Such an assumption is not warranted. The record does not show that the operating conditions on this line are more difficult now than they were when the rates were reduced, nor is it established that the present rates are not remunerative. We therefore find that the reasonableness of the suspended rates has not been established.

THE PROTEST OF THE CHICAGO & EASTERN ILLINOIS RAILROAD.

Prior to the publication of the tariffs suspended in the present proceeding the southwestern lines generally published a rate of 16 cents on yellow-pine lumber from the blanket territory to Thebes and Cairo. This rate applied not only as a local rate to those gateways, but as a proportional on traffic for beyond. Through rates to the consuming territory east of the Mississippi River and north of the Ohio River were commonly made on the basis of combinations on Thebes or Cairo, and the use of rates so made was not restricted to any specific route. In the tariffs suspended in this case most of the lines, while increasing the rates to Thebes and Cairo proper from 16 cents to 17 cents, have left the proportional rate of 16 cents in effect, so

that there has been no increase proposed from stations on most of the lines to points in central freight association territory and trunk line territory. The St. Louis Southwestern Railway and the St. Louis, Iron Mountain & Southern Railway, however, while they propose to increase the local rate to Thebes and Cairo from 16 cents to 17 cents, have not published in the suspended tariffs proportional rates to apply on traffic moving through these gateways, so that on through traffic moving through Thebes and Cairo from points on these two lines there will be an increase of 1 cent in the through rates. The tariffs of the St. Louis, Iron Mountain & Southern, and the St. Louis Southwestern provide, however, that lumber originating on their lines may be routed via East St. Louis on the basis of joint through rates no higher than the rates now in effect. The result of this is that the through rates to points of consumption in central freight association territory and trunk line territory via the East St. Louis route will be the same as the present rates, but traffic moving via Thebes in connection with the Chicago & Eastern Illinois will be required to pay the 17-cent rate up to that gateway plus the rates beyond, making the rates by this route 1 cent higher than by the East St. Louis route.

The Chicago & Eastern Illinois Railroad connects with the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern at Thebes, at which point it has built at great expense facilities for receiving lumber from the southwest. The Chicago & Eastern Illinois Railroad directs our attention to the fact that the practical effect of this adjustment will be to close the route in which its line participates. The St. Louis, Iron Mountain & Southern Railway and the St. Louis Southwestern Railway admit that the proposed increase will have that effect, but they rely upon that provision of section 15 of the act which places a limitation upon the Commission's authority to establish through routes. They further call attention to the fact that no question of through routes is involved in this case and that the only question in issue is the reasonableness or unreasonableness of the proposed increase of 1 cent in the local rate to Thebes and Cairo. This contention is obviously correct, and inasmuch as we have already decided that the proposed increased rate to these gateways has not been shown to be reasonable it follows that the present 16-cent rate must continue to apply as a proportional rate by all routes. It is unnecessary, therefore, to give further consideration to the protest of the Chicago & Eastern Illinois Railroad.

PROPOSED INCREASES IN SOUTHBOUND RATES.

It is also proposed to make increases averaging 2 cents in the rates on all kinds of lumber to New Orleans from a number of

groups of stations in the southwestern territory. From all stations on the St. Louis Southwestern Railway north of Fargo, Ark., the rate has been increased from 17 cents to 19 cents. The same increase has been made from points on other lines in the group which embraces southeastern Missouri and the extreme northern part of Arkansas. The rates from other groups less distant from New Orleans have also been increased by 2 cents. The following table, taken from the brief of one of the protestants, shows the distances to New Orleans from representative points in Missouri and Arkansas and the earnings under the present and the proposed rates:

	Miles.	Rate.	Revenue per ton- mile.	Proposed rate.	Revenue per ton- mile.	Carrier.
		Cents.	Mills.	Cents.	Mills.	
Poplar Bluff, Mo.....	663	17	5.1	19	5.7	(1)
	546	17	6.2	19	7.0	(2)
Sikeston, Mo.....	711	17	4.8	19	5.3	(1)
	534	17	6.8	19	7.0	(2)
Nettleton, Ark.....	629	17	5.4	19	6.0	(1)
	455	17	7.4	19	8.3	(2)
Newport, Ark.....	568	15	5.3	17	6.0	(1)
Earle, Ark.....	534	16	5.6	(3)	.....	(1)
Dermott, Ark.....	377	15	8.0	(1)	.....	(1)
Little Rock, Ark.....	486	16	6.2	17	7.0	(1)
Average.....		.....	6.03	.....	6.53	

¹ St. Louis, Iron Mountain & Southern.
² St. Louis & San Francisco.

³ No change.

Comparatively little evidence has been submitted by the respondents in support of the proposed increases. They assert that nearly all of the rates in question were originally made low because of water competition, that the southbound movement of lumber is relatively small, and that the operating conditions west of the river are difficult. The movement of hardwood lumber to New Orleans from this territory is smaller than the movement to Cairo or St. Louis, and the earnings per ton-mile under the proposed rates vary from 5.3 mills to 8.84 mills. Tables are submitted comparing these earnings with the revenues yielded by higher rates prescribed by the Commission for similar distances in other cases, but there is no proof that the situations are similar.

The protestants show that in *Lumber Rates from Memphis to New Orleans*, 27 I. C. C., 471, the Commission approved a rate of 12 cents on lumber from Memphis to New Orleans, a distance of about 400 miles, and they contend that the present rate of 17 cents from southeastern Missouri and northern Arkansas, affording a differential of 5 cents over the Memphis rate, is sufficiently high. They further show that the rate to New Orleans from Cairo, which is directly east of Poplar Bluff, is 15 cents, and that the rate on staves from St. Louis to New Orleans for export to certain foreign countries is 16.3

cents. Our attention is also called to the fact that in attempting to justify the proposed increased rates northbound the respondents dwelt upon the extraordinarily heavy movement of empty cars southbound. Their evidence in that respect lessens the force of their contention that the southbound rates should be higher because of the light traffic.

In *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 33, complainants whose mills are located in the northern part of the yellow-pine blanket called our attention to the fact that when they shipped to the upper Mississippi crossings they paid a rate as high as that paid by shippers located in southern Louisiana. In that connection we said:

If blanket rates properly apply northward by rail to the gateways, blanket rates, it would seem, should properly apply southward to the Gulf ports. Instead of this the southern mills are accorded mileage rates to the Gulf for export. The record here is not sufficient for us to prescribe export rates to which Arkansas points are entitled, but we are of the opinion that such rates may rightfully be required by complainant.

The fact that the rates proposed in the suspended tariffs would increase by 2 cents the rates on all kinds of lumber from the northern part of the blanket, thereby placing the shippers there located at a further disadvantage, is an added reason for not permitting the proposed rates to take effect.

We are of opinion and find that the evidence of record does not establish the reasonableness of the proposed increases in the southbound rates.

SITUATIONS EAST AND WEST OF THE MISSISSIPPI COMPARED.

In the *Chicago Lumber & Coal case* we found that transportation conditions west of the Mississippi River were substantially dissimilar from those east of the river, and we therefore permitted an increase of 2 cents in the rates from a large territory west of the river. The effect of that decision was to make the rate on yellow-pine lumber from the southwestern blanket to Cairo 2 cents higher than the rate from the principal pine-producing sections east of the river. Considerable evidence has been introduced in the present proceeding for the purpose of showing that the dissimilarity between the two territories is less marked than it was a few years ago. The respondents in the southeast and both shippers and respondents in the southwest unite in saying that the differential of 2 cents in favor of the producers whose mills are located east of the river is no longer justifiable.

An elaborate exhibit has been prepared on behalf of one of the protestants, whose mills are located in the southwest, which pur-

ports to show that the average distance to Cairo from 18 representative centers of production in the southwest is 484 miles, while from 22 similar points in Mississippi Valley territory and southeastern territory the average distance to Cairo is 505 miles. While this exhibit has not escaped criticism, it seems fairly to show that, if distance alone were controlling, the rates to Cairo from both sides of the river should be on a parity.

On page 47 of our report in the *Wisconsin & Arkansas Co. case*, 33 I. C. C., 33, we inserted a table containing certain operating statistics for representative lumber-carrying lines both east and west of the river. More elaborate exhibits filed in the present proceeding show that the net operating revenues per mile of road of typical carriers in the southwest compare favorably with the net operating revenues per mile of road of the lines east of the Mississippi.

The question as to the effect of our decisions in the *Tap Line cases*, 23 I. C. C., 277 and 549, on the revenues of the southwestern lines has played a prominent part in this proceeding, but the evidence is of a rather indefinite character. Our decision in the *Central Yellow Pine case*, 10 I. C. C., 505, in which certain increases in the rates east of the Mississippi River were denied, was based in part on the fact that the roads west of the river made tap-line allowances to proprietary mills, while similar allowances were not made by the lines east of the river, with the exception of the Mobile & Ohio. We observed in the case cited that—

if the rate west of the river is reasonable minus the allowances, this is persuasive or gives color to the proposition that after a similar reduction the rates east of the river would still be reasonably high.

It is now asserted that as a result of the *Tap Line cases* the allowances so paid by the southwestern lines have been considerably reduced. The respondents were unable or unwilling to furnish exact information as to the extent to which tap-line allowances have been reduced, and the protestants were able only to cite a few instances in which the allowances now received by tap lines are less than they formerly were. In spite of the unsatisfactory nature of the evidence it may be said with confidence that the revenues of the southwestern lines are less impaired by tap-line allowances than they were when the *Central Yellow Pine case* was decided, and at least to that extent there is less dissimilarity in the conditions east and west of the river than there was a few years ago.

PROPOSED INCREASES FROM TERRITORY EAST OF MISSISSIPPI RIVER.

Generally speaking, the respondents propose to increase by 1 cent the rates on lumber from Mississippi, Alabama, Georgia, Florida, and Tennessee to Memphis, St. Louis, Cairo, and the Ohio River crossings east of Cairo. Cottonwood and gum lumber constitute the most im-

portant exception to this general statement. The rates on cottonwood and gum have been materially lower than the rates on other kinds of lumber, and the respondents propose to raise them to the hardwood basis. The result is that the increases in the rates on cottonwood and gum in many cases are much greater than 1 cent.

As already noted, the respondents east of the Mississippi River have not increased any of the through rates to points beyond the Ohio River, though it is their intention to do so if the increases proposed in this case are allowed. From the southeastern territory there are proportional rates to the gateways, as well as local rates, and the same increases have been made in both.

The principal difference between the position taken by the southwestern lines, whose reasons for advancing their rates we have already considered, and that taken by the lines east of the river, is that the latter maintain that the proposed increases have been occasioned by the Commission's decisions in a line of cases known as the *Ohio River cases*. They are careful to state that the fundamental cause of the increases is the fact that the rates are unduly low, but a large proportion of their evidence is directed to their contention that the proposed increases are the logical, if not inevitable, result of our decisions in these cases.

In the cases referred to it appeared that the rates on lumber to and from the Ohio River crossings were so constructed as to give a point located on one side of the river an undue preference over a competing point directly opposite. For example, in *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239, it appeared that a bridge toll of 1 cent per 100 pounds was added to the rate from the north bank of the Ohio River to make the rate from Louisville, while Cairo, Cincinnati, and Evansville paid no bridge toll either on inbound or outbound shipments, so that on lumber handled at Louisville and reshipped to points in central freight association territory and trunk line territory dealers in lumber at Louisville paid a through rate 1 cent higher than dealers located at north bank points, especially Cincinnati. We said:

There can be no doubt that Louisville, on the south bank of the river, ought not to pay inbound a rate which is sufficient to cover the transportation of traffic to the north bank of the river, and then, when reshipping the traffic to the north, again pay an amount sufficient to cover the transportation across the bridge. In other words, Louisville ought not to be considered on the north bank of the river on inbound shipments and on the south bank of the river on outbound shipments.

In *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, we said:

In view of all these considerations we do not believe that, in so far as competition with Cincinnati is concerned, the maintenance of rates from Louisville

to central freight association territory which reflect the bridge toll for crossing the Ohio River and which in consequence thereof are 1 cent higher than rates from Cincinnati to equidistant points constitutes an undue discrimination against Louisville.

We then added:

In view of all these facts and circumstances, it is our opinion that the rates on lumber from equidistant southeastern territory to Louisville should be 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other north bank Ohio River crossings.

A number of other cases are cited by the respondents in which we have held that the transportation of lumber across the expensive Ohio River bridges is an additional service which warrants a spread of 1 cent per 100 pounds in the rates to and from opposite crossings. *Manufacturers & Merchants' Asso. of New Albany v. A. & A. R. R. Co.*, 24 I. C. C., 331; *Investigation & Suspension Docket No. 115*, 24 I. C. C., 686; *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Same v. Same*, 29 I. C. C., 593; *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40.

Relying upon these cases, the respondents say that—

It is impossible to escape the conclusion, in considering this series of Ohio River bridge toll cases, that the Commission intended that inbound rates from Southern producing territory to south bank points at all crossings should be made uniformly 1 cent less than to opposite north bank points—

and they have accomplished this result mainly by increasing by 1 cent the rates to the north bank points. Not only has the uniform spread of 1 cent been made between points on opposite sides of the Ohio River, but the proposed rates establish the relationship between Louisville and Cincinnati prescribed in the second *Norman Lumber Co. case*. The carriers frankly admit that the adjustment could have been made by reductions or by part increases and part reductions. Their reasons for accomplishing the desired results by increases are as follows: (1) An order to cease from unjust discrimination operates in the alternative; (2) in the *Ohio River cases* the reasonableness of the rates to the crossings was not challenged; (3) the rates to the crossings are unusually low, having been made to meet the competition of less distant producing areas; (4) the rates to the south bank points apply in many cases to a large intermediate territory, so that a reduction in these rates would mean a corresponding reduction to all the intermediate points. It is shown, for example, that a reduction in the rates to Louisville would reduce the rates to many intermediate points on the Illinois Central between Louisville and Paducah, and also to points on the Louisville & Nashville south of Louisville. The record shows that the movement of lumber to this intermediate territory is by no means negligible, and the respondents earnestly insist that it would be unjust to require them to create

the spread of 1 cent between north bank and south bank points by making reductions which would seriously shrink their revenues.

COST OF OPERATING OVER THE OHIO RIVER BRIDGES.

Considerable evidence has been submitted, though in fragmentary fashion, for the purpose of showing that the cost of operating over the Ohio River bridges is so great as to warrant an additional charge of 1 cent per 100 pounds, which in the transportation of lumber is approximately equivalent to \$5 per car.

The evidence of record confirms our previous finding that if the Ohio River crossings are not to be placed on a parity by absorbing the bridge tolls at all crossings, the equalization should be effected by making a uniform charge of 1 cent per 100 pounds for the bridge service in all cases. The respondents direct our attention to the fact that the northern lines have made the rates on lumber from south bank points to destinations north of the Ohio River 1 cent higher than the rates from the opposite north bank points, so that it is no longer possible for the southern lines to equalize all the crossings by uniform absorptions.

We have frequently said that it is the carrier's duty under the statute to establish the reasonableness of the increased rate rather than the reasonableness of the increase. It is admitted, however, that the Ohio River bridges constitute an important item in respondents' transportation costs, and considerable evidence has been introduced for the purpose of showing that it costs at least 1 cent per 100 pounds to haul a carload of lumber across these bridges.

In the second *Norman Lumber Co. case* we set out the actual bridge tolls on lumber at the Ohio River crossings, on local and through business, as follows:

From—	Local.	Through.
to New Albany, Ind.....	2	1
to Jeffersonville, Ind.....	2	1
to Cairo, Ill.....	2	2
to Cincinnati, Ohio (C. & O. Ry.).....	2	{
to Cincinnati, Ohio (C. & O. Ry.).....	2	
to Brookport, Ill. (I. C. R. R. via ferry).....	2	2
to Evansville, Ind.....	2	1
to Cincinnati, Ohio (L. & N. R. R.).....	2	1
to Cincinnati, Ohio (L. & N. E. R.).....	2	1

¹ Switching rate, 25 cents per 2,000 pounds; maximum, \$3 per car; minimum, \$5.

The evidence shows that the total cost of the bridge at Cairo as of January 30, 1915, was \$3,731,852.47. The total length of the bridge proper is 4,137 feet, and including the approaches its total length is 3.87 miles. The Kentucky-Indiana Terminal bridge between Louisville and New Albany cost up to June 30, 1914, \$2,242,412.34, and

this amount is said not to include the cost of tracks and terminal facilities used in transporting traffic between Louisville and New Albany.

Information submitted by the Louisville Bridge Company shows that the original cost of its bridge and tracks was \$2,059,397. The cost of the Cincinnati Southern bridge is approximately \$2,000,000. In the case of the Cairo bridge it is alleged that the approaches have been seriously damaged by disastrous floods since 1906, and at a great expense the approaches have recently been raised 60 feet.

Evidence has also been introduced as to the annual cost of maintaining some of the bridges. The total cost, including interest and taxes, for the fiscal year 1914, of the bridge between Louisville and New Albany, owned and operated by the Kentucky & Indiana Terminal Railroad Company, was \$812,903.02. During the same year it cost \$499,277.14 to operate the bridge owned by the Louisville & Jeffersonville Bridge Company. None of the southern lines own any interest in this bridge, and on traffic destined to Jeffersonville they are obliged to pay to the bridge company the transfer charge of 2.1 cents, making necessary an absorption of 1.1 cents per 100 pounds if the spread between north bank and south bank points is only 1 cent. It is also shown that the Illinois Central Railroad and the Louisville & Nashville Railroad are required to pay 2.1 cents per 100 pounds to the Kentucky & Indiana Terminal Railroad Company on all lumber consigned to New Albany from the south.

There are obvious difficulties which preclude an accurate determination of the cost of hauling one car of lumber across these bridges. In some cases the bridges are owned by companies which operate in connection therewith many miles of tracks and terminals, and the operating expenses are not separated as between the bridge proper and the other property of the company. In other cases the bridges are used by passenger trains and trolley cars, and it is difficult, if not impossible, to allocate the expenses. In still other cases it is necessary, in hauling traffic from a city on one side of the river to a city across the river, to haul the traffic over several miles of tracks in addition to the bridge haul proper. Furthermore, some of the companies do not distinguish between loaded and empty cars in making their reports as to the number of cars crossing the bridges in a year.

As previously suggested, the matter principally in issue in this case is not the actual cost of transporting traffic across the Ohio River bridges, but rather the reasonableness of the proposed increased rates. If the proposed rates are reasonable, they must be permitted to take effect whether the bridge tolls are unreasonable or not. On the other hand, if the proposed rates are not reasonable they must be condemned, regardless of the reasonableness of the bridge tolls. We

must, however, in considering the reasonableness of the proposed rates, recognize the fact that the Ohio River bridges involved large expenditures of capital, that they are expensive to maintain, and that the rates on lumber from southern points to central freight association territory and trunk line territory may well be somewhat higher than they would be if it were not necessary to cross the Ohio River. The evidence in the present record does not show that an allowance of less than 1 cent per 100 pounds for the bridge toll would be reasonable.

PROPOSED INCREASES FROM MISSISSIPPI VALLEY TERRITORY.

The lines extending to Cairo and East St. Louis from the Mississippi Valley territory are the Illinois Central and the Mobile & Ohio. Both yellow pine and hardwoods, including cottonwood and gum, are found in great quantities along the lines of these carriers and their connections. Little pine lumber is produced in the Mississippi Valley north of the line of the Alabama & Vicksburg Railway, the principal pine-producing area being in the extreme southern part of the valley, especially the territory served by the Illinois Central and its connections. North of the line of the Alabama & Vicksburg Railway, and particularly along the Yazoo & Mississippi Valley Railroad, hardwood is found in abundance. The heavier production of hardwood is in the so-called delta section, bounded by Memphis on the north and by Vicksburg and Jackson, Miss., on the south. Cottonwood lumber grows along the rivers and is shipped principally from Memphis, Helena, Greenville, Miss., and Vicksburg. The principal production of gum lumber is also found in the delta section. In Mississippi pine lumber constitutes 82 per cent of the total production.

The proposed increases from Mississippi Valley territory apply not only on pine lumber but on hardwood, including cottonwood and gum.

From the great pine-producing section in southern Mississippi and Louisiana, known as group 1, the proposed increases from points on the Illinois Central and Yazoo & Mississippi Valley are as follows: One cent to St. Louis, Cairo, and Cincinnati; one-half cent to Henderson, Evansville, Owensboro, and Louisville. A reduction of 2 cents is made in the rates to Paducah, and the rates to Brookport and Metropolis are reduced 1 cent. A reduction of one-half cent is made in the rates to New Albany and Jeffersonville, and the rates to East Cairo have not been changed. Similar changes also apply from points on connecting roads, such as the Gulf & Ship Island, New Orleans Great Northern, and the New Orleans, Mobile & Chicago.

The rates from Memphis on all kinds of lumber other than cottonwood and gum have been increased as follows: One cent to Cairo, Brookport, Metropolis, and Cincinnati; one-half cent to St. Louis, Henderson, Owensboro, New Albany, and Louisville; 1½ cents to Evansville. The rates to East Cairo and Paducah have not been changed, but the rates to Jeffersonville have been reduced one-half cent.

From group 9, which is the delta section and is served by the Illinois Central and the Yazoo & Mississippi Valley railroads, the proposed increases are as follows: One-half cent to St. Louis, Henderson, Owensboro, and Louisville; 1 cent to Cairo, Brookport, Metropolis, and Cincinnati; 1½ cents to Evansville and New Albany. A reduction of one-half cent has been made in the rate to Jeffersonville. From group 7, which is also in the delta section south of group 9 and which produces only hardwoods, the proposed increases are as follows: One-half cent to St. Louis and Jeffersonville; 1 cent to Cairo, Brookport, Metropolis, and Cincinnati; 1½ cents to Henderson, Owensboro, and Louisville; 2½ cents to Evansville and New Albany.

The proposed adjustment in the rates from the principal pine-producing section served by the Mobile & Ohio Railroad is similar to that already described on the Illinois Central. The principal producing section served by the Mobile & Ohio is in southeastern Mississippi and in southern Louisiana. From all stations south of Artesia, Miss., the proposed increases are as follows: One-half cent to Louisville, Evansville, Henderson, and Owensboro, and 1 cent to Cincinnati, Cairo, and St. Louis. A reduction of one-half cent is made to New Albany and Jeffersonville, 2 cents to Paducah, 4.2 cents to Brookport, and 1 cent to Metropolis.

The respondents direct our attention to the fact that the proposed increases will bring about in every case the adjustment required by the Commission in the various *Ohio River cases*. For example, the rates to Paducah are uniformly 1 cent less than to Cairo, the rates to Metropolis are the same as to Cairo, and the rates to Cincinnati and Louisville establish the differentials required in the second *Norman Lumber Co. case*.

For the purpose of establishing the reasonableness of the proposed rates from Mississippi Valley territory the respondents rely in some measure upon the history of the rates in question. Their principal contention in this respect is that the rate from the territory east of the Mississippi to Cairo has been for several years 2 cents lower than the rate from the west side, while to St. Louis the east side rates have been 1 cent lower.

Emphasis is also laid on the fact that while the tonnage handled by the Mississippi Valley lines is considerably greater than it was

10 years ago a comparatively small percentage of the traffic originates on the main lines. As the producers located on the main lines cut away their holdings they dismantled their mills and moved to other territory, principally on connecting lines, with the result that a large proportion of the tonnage now handled by the trunk lines originates on connecting lines, with which the rates now must be divided. Of the 4,811,532 tons of lumber handled by the Illinois Central in 1913 it originated only 2,220,268 tons. For the same year the Mobile & Ohio originated only 824,661 tons of the 2,367,852 tons of forest products handled by it. We are further told that the country through which the Yazoo & Mississippi Valley Railroad operates is low and swampy, and as much subject to floods as the territory west of the river.

The direct line to Cairo and St. Louis from the pine-producing territory in the southern part of the Mississippi Valley is the Illinois Central. The shortest distance for which the present 14-cent rate to Cairo, which it is proposed to increase to 15 cents, applies is 320 miles, from Goodman, Miss. The maximum distance is 554 miles, from New Orleans. The center of production is at Kentwood, La., which is 470 miles from Cairo. On the Yazoo & Mississippi Valley Railroad the center of production is said to be at Garyville, La., 583 miles from Cairo. From Kentwood and Garyville the revenues per ton-mile under the proposed rate of 15 cents to Cairo would be 6.4 mills and 5.15 mills, respectively.

Elaborate exhibits have been filed by the respondents comparing the suspended rates from the Mississippi Valley territory with other rates, especially with rates from equidistant points west of the river. These exhibits will not be discussed in detail in this report. It suffices to say that they show that the proposed rates compare favorably with rates for similar distances from other territories.

No evidence has been submitted by the respondents to show that the lumber traffic is not relatively remunerative. They have prepared exhibits, however, showing the financial condition of the Mississippi Valley lines. The statistics filed on behalf of the Illinois Central Railroad show that the property investment account of that carrier increased from \$180,557,000 in 1900 to \$277,451,000 in 1914. During the same period the operating ratio increased from 65.31 per cent to 77.28 per cent, while the ratio of net operating income to property investment decreased from 5.32 per cent in 1900 to 4.58 per cent in 1914. The operating ratio of the Mobile & Ohio Railroad increased from 69.60 in 1903 to 81.05 in 1914. During the same period the operating income per mile of road fell from \$2,604 in 1903 to \$2,195 in 1914.

The evidence of record would not warrant a finding that the spread which we have said should exist between north bank and south bank points should be accomplished by uniform reductions in the rates to the south bank points. At a number of the crossings, however, the rate to the north bank point is already 1 cent higher than the rate to the south bank point. We therefore find that the proposed increased rates to the north bank points from the pine-producing section of the Mississippi Valley, located on and west of the line of the Mobile & Ohio Railroad and east of the Mississippi River, are reasonable to the extent that they do not exceed the present rates to the south bank points by more than 1 cent per 100 pounds. In those cases where a spread of 1 cent or more already exists between opposite points no increases will be permitted. The proposed rates to St. Louis are shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect. We further find that no increases should be made in the rates to the south bank points.

RATES ON HARDWOOD OTHER THAN COTTONWOOD AND GUM.

As noted above, the principal production of hardwoods in the Mississippi Valley territory is in the so-called delta section south of Memphis, known as groups 7 and 9. The proposed increases from these groups to the various crossings are shown in the following table:

	St. Louis.		Cairo.		East Cairo.		Evansville.		New Albany.		Louisville.		Cincinnati.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
From group 7:	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Pine.....	15	15½	13	14	13	13	15	17½	15	17½	15	16½	18	19
Cottonwood and gum.....	13	15½	10	14	10	13	13	17½	15	17½	13	16½	16	19
Other kinds.....	15	15½	13	14	13	13	15	17½	15	17½	15	16½	18	19
From group 9:														
Pine.....	15	15½	13	14	13	13	15	16½	15	16½	15	15½	18	19
Cottonwood and gum.....	13	15½	10	14	10	13	13	16½	15	16½	13	15½	16	19
Other kinds.....	15	15½	13	14	13	13	15	16½	15	16½	15	15½	18	19

An exhibit filed by respondents shows that the average distance to all the crossings from Charleston, Miss., a representative producing point, is 452 miles, the average rate 15.5 cents per 100 pounds, and the average revenue per ton-mile 6.9 mills.

Two cases recently decided by the Commission are relied upon by the parties in the present case as having an important bearing on the
34 I. C. C.

situation before us. One of them, *Southern Hardwood Traffic Bureau v. I. C. R. R. Co.*, 31 I. C. C., 6, is relied upon by the respondents as proving beyond question the reasonableness of the proposed increased rates. The other, *Bellgrade Lumber Co. v. I. C. R. R. Co.*, 32 I. C. C., 403, is said by the protestants to prove the proposed rates to be excessive. In the former case we approved the rates on lumber from Batesville, Miss., to points beyond the Ohio River, and the respondents show at some length that the proposed rates in the present case are not higher than those approved in that case. An examination of the case referred to shows that the principal question in issue in that case was the relationship of rates between Sardis, Miss., and Batesville. Only in the last sentence of the report did we refer to the reasonableness *per se* of the rates, and then only for the purpose of indicating that the evidence of record did not prove the rates to be unreasonable. In the *Bellgrade case* we held that the rate of 12 cents on all kinds of lumber from Memphis to New Orleans was not shown to be unreasonable. The protestants show that the rates proposed are slightly higher than the rates approved for similar distances in the case cited.

The respondents have also submitted exhibits comparing the proposed rates with rates for similar distances in central freight association territory, from which it appears that the former are only slightly higher, and in some cases no higher, than the latter. It is further shown that because the hardwoods grow principally along the waterways the rates on hardwoods have been depressed by water competition to a greater extent than the rates on pine. It would therefore be unjust to require the respondents to effect the required adjustment at the Ohio River crossings by uniform reductions. Nor does the evidence of record show that the rates on hardwood, other than cottonwood and gum, should be less than the rates on pine. We are therefore of opinion and find that the proposed increased rates on hardwoods, other than cottonwood and gum, to the north bank Ohio River points and to St. Louis and East St. Louis from points east of the Mississippi River and on and west of the Mobile & Ohio Railroad are shown to be reasonable to the extent that they do not exceed by more than 1 cent per 100 pounds the rates now in effect. In those instances where the rates on hardwoods, other than cottonwood and gum, are lower than the rates on yellow pine, increases greater than 1 cent will be permitted, provided that the rates shall in no case exceed the rates contemporaneously in effect from the same points on pine lumber.

INCREASES FROM POINTS ON THE SOUTHERN RAILWAY IN MISSISSIPPI.

The principal lumber-producing territory served by this respondent is in western Mississippi, west of Greenwood, Miss., a territory which is also reached by the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad. The yellow pine originating on the line of this carrier is said to be almost negligible. About 75 per cent of the lumber moving from points west of Greenwood consists of cottonwood and gum. It is stated on behalf of this respondent that the rates from the lumber territory served by it are primarily made, and to a large extent controlled, by the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad, the distances to Memphis and the Ohio River crossings from the lumber territory in western Mississippi being considerably greater via the Southern Railway than the distances over the more direct lines.

Exhibits filed by witnesses for the Southern Railway in Mississippi, giving in detail the present and proposed rates to the crossings, show that the increases proposed are similar to those proposed by competing lines. The present rates to north bank points are generally the same as the rates to the opposite south bank points. It is proposed to increase by 1 cent the rate to Cairo, and the increases to the other north bank points vary from one-half cent to 2½ cents. The rates on cottonwood and gum from the principal producing section to Cairo are increased from 10 cents to 14 cents, the increases to the other crossings being somewhat less.

The evidence submitted by this respondent consists to a large extent of testimony and exhibits as to its financial condition. This company has never paid a dividend. The ratios of its total expenses and taxes to operating revenue for the fiscal years 1912, 1913, and 1914 were 90.65, 102.43, and 88.52, respectively, the figures for 1913 showing a net loss of \$85,026.49. Since November 1, 1906, this company has been operated by the Mobile & Ohio Railroad.

We are of opinion and find that the proposed rates on lumber, other than cottonwood and gum, from points on the Southern Railway in Mississippi to St. Louis are shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect, and that the proposed rates to the north bank Ohio River crossings are shown to be reasonable to the extent that they do not exceed by more than 1 cent the present rates to the opposite south bank points. No increases to south bank points or to Memphis will be allowed, except that the rates on cottonwood and gum lumber may be increased to the same basis as the rates on other hardwoods, as hereinafter indicated.

THE RATES FROM MEMPHIS, TENN.

The present and proposed rates, in cents per 100 pounds, from Memphis to the Ohio River crossings and St. Louis are shown in the following table:

From Memphis, Tenn., to—	Pine lumber.		Cottonwood and gum.		Other kinds of lumber.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
St. Louis, Mo., East St. Louis, Ill.....	12	12½	10	12½	12	12½
Calro, Ill.....	10	11	10	11	10	11
East Calro, Ky.....		10		10		10
Brookport, Ill., Metropolis, Ill.....	10	11	10	11	10	11
Paducah, Ky.....	10	10	10	10	10	10
Evansville, Ind.....	11	12½	10	12½	11	12½
Henderson, Ky.....	11	11½	10	11½	11	11½
Owensboro, Ky.....	12	12½	10	12½	12	12½
New Albany, Ind.....	13	13½	11	13½	13	13½
Jeffersonville, Ind.....	14	13½	12	13½	14	13½
Louisville, Ky.....	12	12½	10	12½	12	12½
Cincinnati, Ohio.....	15	16	13	16	15	16
Covington, Ky., Newport, Ky.....	15	15	13	15	15	15

An exhibit filed by the respondents compares the proposed rates from Memphis with the proposed rates from Nashville, Chattanooga, and Knoxville to the same crossings. Respondents say that this exhibit “demonstrates that under this revision Memphis still has a very favorable adjustment.” It is true that the proposed rates from Nashville, Chattanooga, and Knoxville yield earnings per ton-mile which are approximately the same as those which would result from the proposed rates from Memphis, but this comparison can not be regarded as controlling. No increases will be permitted, therefore, in those cases where the rates to opposite crossings already reflect the bridge toll. Increases not exceeding 1 cent per 100 pounds may be made in the rates to north bank points where the rates to such points are not already higher by 1 cent than the rates to the opposite points. The proposed increases to St. Louis have been justified.

RATES FROM MEMPHIS AND HELENA TO THE WEST. •

Among the tariffs suspended in this proceeding is Frank Anderson, agent’s, tariff I. C. C. No. 7, in which it is proposed to increase the rates on lumber from Memphis and Helena to points in Iowa, Minnesota, Missouri, and other states west of the Mississippi River. There is little evidence in the record in support of the proposed rates. There are general statements to the effect that the respondents’ object in publishing this tariff was to consolidate in one issue the individual tariffs of a number of lines and “place them on a proper basis,” but the result has been to make 2,755 increases in the rates on

84 I. C. C.

cottonwood and gum lumber and 3,232 increases in the rates on other kinds of lumber, though there are also many reductions. It is stated that the composition of this tariff was begun prior to the present proceeding and that any increases in the rates to Cairo allowed in this proceeding would necessitate a further revision of the rates to points west of the river. Exhibits filed by the respondents indicate that the increases vary from 1 cent to 2 cents. The respondents explain that the suspended rates have been constructed by taking the local or proportional rates to Cairo, St. Louis, or the other crossings, and adding thereto the local or proportional rates beyond. In many instances the proposed increases seem to have been due to previous increases in the rates west of the gateways, but the evidence does not show when these increases were made, or that the proposed rates are reasonable. We find that the proposed rates have not been justified, except that the proposed rates on hardwood, including cottonwood and gum, will be allowed to the extent that they do not exceed the present rates on yellow pine.

PROPOSED INCREASES ON GUM AND COTTONWOOD.

East of the Mississippi River, and particularly in the Mississippi Valley territory, the rates on gum and cottonwood lumber have for many years been considerably lower than the rates on other lumber. In this territory the hardwood rates are in some cases below the yellow-pine level, but cottonwood and gum are on a basis still lower than the hardwood basis. The suspended tariffs propose to raise both gum and cottonwood to the hardwood level—a proposal which has aroused more vigorous protests than any other involved in the present proceeding. The rates on cottonwood and gum have been so much lower than the rates on other woods that the increases made by the respondents to raise them to their “normal” level are material, in some instances as high as 40 per cent. The respondents allege that the lower rates accorded to cottonwood and gum have been a voluntary concession to those kinds of wood, made for the purpose of aiding them to establish themselves in the markets, and that there is no transportation reason why gum and cottonwood lumber should take lower rates than the other hardwoods. Producers of gum and cottonwood contend, on the other hand, that these woods differ from others in their history, their value, and in the profit derived from their production, and that the differences are sufficiently pronounced to warrant a finding by the Commission that gum and cottonwood lumber should move on lower rates than the other hardwoods.

Much of the testimony has been addressed to this issue. It is not seriously contended that cottonwood is materially less valuable than other kinds of wood. The evidence shows beyond a doubt that cot-

tonwood is not entitled to a special rate. We shall therefore confine our attention to the issue as to the status of gum lumber. The proposed rates on cottonwood lumber will therefore be approved, to the extent that they do not exceed the rates contemporaneously in effect on other hardwood lumber from the same points.

The extent of the increases in the rates on gum lumber from this territory is illustrated by the increases from groups 7 and 9, which are in the delta section, where the production is heaviest. From group 7 the increases are as follows: $2\frac{1}{2}$ cents to St. Louis, New Albany, Jeffersonville; 3 cents to East Cairo, Paducah, and Cincinnati; $3\frac{1}{2}$ cents to Henderson, Owensboro, and Louisville; 4 cents to Cairo, Brookport, and Metropolis; and $4\frac{1}{2}$ cents to Evansville. The proposed increases in group 9 are similar in amount.

The record shows that producers of gum lumber have labored under unusual difficulties in establishing their product in the markets. Not many years ago gum timber was considered almost valueless. Owners of timberland would give it to anyone who would undertake to remove it. The prejudice against it was considerably greater than that against other southern woods, and it was in some measure justified. Experienced lumbermen testified that no lumber warps so badly as gum, and that for many years no method of seasoning was known which would overcome this difficulty, which seems to have been due, at least in part, to the unusually large amount of sap in this kind of timber. Processes have been discovered which now make it possible to season gum lumber without warping, but they usually take more time and involve more expense than is involved in seasoning other kinds of lumber.

The stands of gum timber in the southeast and southwest are much more extensive than is commonly supposed. An exhibit filed by one of the protestants shows that 48.6 per cent of the standing timber in a typical southern hardwood forest is gum. The heaviest production of gum lumber is in Arkansas and Mississippi, those two states alone producing annually about 47 per cent of the red gum lumber of the United States. A number of the principal producers of hardwood lumber in this region testified that more than 50 per cent of their total production consists of gum lumber.

Several different qualities of wood varying greatly in value are found in the same gum tree. Statistics compiled by one of the principal protestants and covering its operations for the period of 1910-1913 shows that about 18 per cent of the tree consists of what is known as first and second red gum, the value of which is about \$23.60 per 1,000 feet. This lumber is used as a substitute for the more valuable hardwoods, especially in making furniture. About

2 per cent of the tree consists of box-board wood, the value of which is about \$21.25 per 1,000 feet. Somewhat more than 20 per cent of the tree consists of what is known as first and second sap gum, averaging \$14.75 per 1,000 feet in value. Still lower qualities are Nos. 1 and 2 common sap gum, the average value of which is in the neighborhood of \$10 per \$1,000 feet, and which constitutes about 30 per cent of the tree. Thirteen per cent of the tree consists of No. 3 common gum, which is worth only about \$7.60 per 1,000 feet, and which, even under the present freight rates, can not be produced to advantage.

The figures given in the preceding paragraph will indicate in a general way the relative values of these woods. Exhibits filed by numerous protestants show that the log run value of gum lumber is in normal times somewhat over \$16 per 1,000 feet. During the last year, and especially since the outbreak of the war in Europe, there has been an unusual depression in the lumber industry, and gum lumber, in common with other kinds, has fallen materially in value. An exhibit filed on behalf of one of the principal protestants shows that for the first six months of 1913 the log run value of red gum and sap gum was \$18.31 per 1,000 feet, while for the same period in 1914 the log run value was approximately \$15.75 per 1,000 feet. Producers of gum lumber are unanimous in saying that this reduction in the value of gum lumber has practically eliminated the slight profit which they derived from this business in normal times, and that any further increase in the freight rate under present conditions would make it impossible for them to continue their operations.

The following table, taken from one of protestants' exhibits, shows the values of the different grades of gum lumber, the percentage of the different grades in each tree, and indicates the depression in prices which began in 1913:

Statement showing selling prices of gum lumber f. o. b. Charleston, Miss., for the year 1913.

[Basis, Memphis prices as quoted by Lumbermen's Bureau, Washington, D. C., and deducting therefrom \$1.50 freight on red gum and \$1.25 on sap gum.]

Grade.	Per cent of tree.	Jan., 1913.	Dec., 1913.	Oct., 1914.
First and second red.....	18	\$33.50	\$27.00	\$23.50
No. 1 common.....	16	19.50	16.00	14.50
Box boards.....	2	23.25	23.25	21.25
First and second sap.....	20.5	18.25	16.75	14.75
No. 1 common sap.....	13.5	13.75	12.75	11.25
No. 2 common sap.....	17	11.50	10.50	9.00
No. 3 common sap.....	13	8.00	7.00	7.50
Log run.....	100	18.21	15.72	14.02

The prejudice which formerly existed against red-gum lumber has been largely overcome. A report of the United States Department of Commerce and Labor for 1912 says:

Arkansas produces more red-gum lumber than any other state, and one-half the mill output is further manufactured at home. The rise of this wood from obscurity to prominence has been phenomenal. Once considered practically worthless, it now stands high among furniture and finished woods for musical instruments and for many other purposes. It may be successfully finished to imitate Circassian walnut, oak, mahogany, and other expensive cabinet woods. Its own grain, finished naturally from carefully selected logs, is scarcely surpassed by any wood of this country. In Europe it is known as satin walnut.

A similar document, issued by the same department in 1911, says:

Though the production of red-gum lumber does not seem to be increasing, the wood is growing in popularity and is much sought by those who use it to imitate more costly woods. * * * When exported to Europe it is generally known there as "satin walnut" and "hazelwood." The difficulty met with in seasoning it formerly stood in the way of extending its usefulness, but this has been largely overcome.

Other reports issued by the same department show that more veneer and cooperage stock is now made from gum than from any other American wood.

The record leaves no doubt that the special rates accorded to gum and cottonwood lumber from points on the lines of the Illinois Central Railroad and the Yazoo & Mississippi Valley Railroad constitute a marked exception to the general rule. Although gum lumber is produced in enormous quantities in Arkansas and Louisiana, the rates on gum lumber from those states to the principal gateways are almost without exception the same as the rates on other hardwoods. Furthermore, it appears that gum lumber does not load as heavily as other hardwoods.

In *Lumber Rates—Southern Ry. Points to Eastern Points*, 31 I. C. C., 244, involving rates on lumber from North Carolina and Tennessee to eastern destinations, we had occasion to consider the propriety of an adjustment whereby spruce and hemlock had been accorded lower rates than other kinds of lumber. We there said:

Despite the desirability of a more uniform adjustment, it may be well here to point out the serious defects that impress us in the schedules proposed. In the record here made it seems evident that the maintenance of different rates on the different grades of lumber based on value has not been justified. In official classification territory the carriers maintain the same rates on all kinds of lumber except those of such distinctly higher value as to be properly distinguishable. Apparently that plan was formerly in effect in this territory, but departures were begun upon the representation of some shipper that hemlock could not move on the general lumber rate. It was therefore put upon a preferred basis. Inevitably the spruce operators contended that that timber was

in competition with hemlock, and it followed to a lower level. Producers of pine, gum, maple, beech, chestnut, and birch might easily make similar representations and the complexity of the rate structure be indefinitely increased. The effort of revision should be directed toward the uniformity existing in the northern territory.

In *Northbound Rates on Hardwood*, 32 I. C. C., 528, evidence was introduced showing the adverse conditions under which the producers of hardwood in the southwest were operating. In that connection we said:

There is much evidence that the hardwood industry in the southwest is suffering from adverse conditions. In recent years substitutes of various kinds have replaced hardwoods in the manufacture of containers and of parts of containers. Some of the shippers testified that the trade prejudice already mentioned still works to their detriment. It was also testified that conditions such as these, linked with others, have resulted in a depression affecting the whole industry in that region, and that in consequence only the larger and better growth and higher grade is being utilized. The result is waste, both in logging and in manufacture. There is some evidence that this waste is greater than in the yellow-pine industry.

But however this may be, and whatever effect the existence of such industrial conditions might have in prompting the voluntary institution or maintenance by carriers of rates which in other respects would be regarded as exceptionally low, this Commission will not require the respondents to maintain such rates on the facts disclosed in this record. We are here dealing with a transportation problem as distinguished from an industrial problem, however frequent or intimate the points of contact.

One of the principal objections which shippers in the delta section have to the proposed rates is that they will be unable to ship under them. The respondents point out, however, that many producers of gum lumber located west of the Mississippi River are now shipping at rates higher than those proposed from the territory east of the river.

After a careful consideration of all the evidence of record we conclude that gum lumber should not be accorded special rates. We are convinced from the evidence that the difficulties under which producers of gum lumber are now operating are due in no small measure to the depression which followed upon the outbreak of the European war. The evidence shows conclusively that the decline in the value per 1,000 feet of gum lumber during the last year has been materially greater than the increased cost per 1,000 feet which will result from the proposed freight rates. It is not fair in gauging the reasonableness or unreasonableness of a particular rate to consider the value of the commodity in its most unfavorable period. While it is undoubtedly true that gum lumber is one of the cheaper grades of wood, the record shows beyond a doubt that in normal times its average value runs closely up to the

value of other woods which are now moving at materially higher rates. If we should hold in the present proceeding that gum lumber is entitled to a special rate because of the peculiar difficulties now incident to the production of that kind of lumber, not only would the carriers west of the river have to accord special rates to gum lumber, but it is not at all impossible that producers of other kinds of lumber would be able to show that they, too, are operating under unusual difficulties, that the value of their lumber has declined, and that they are therefore entitled to more favorable rates. Not without significance in this connection is the fact that counsel for one of the protestants has filed as exhibits letters written by numerous lumber dealers which purport to show that southern oak is greatly inferior to northern oak; that it is very hard, heavy, and liable to warp, and that it "honeycombs, twists, and buckles when kiln-dried, which defects cause serious waste."

It should be added that the respondents propose to reduce the rates on walnut, cherry, and cedar from this territory to the same basis as the rates on common lumber. While it is doubtless true that the movement of these kinds of wood is small, uniformity in the lumber rates is desirable.

We are therefore of opinion and find that the proposed rates on gum lumber have been shown to be reasonable to the extent that the rates on other hardwoods are observed as maxima.

INCREASES FROM POINTS ON THE ALABAMA GREAT SOUTHERN AND THE NEW ORLEANS & NORTHEASTERN.

The proposed increases on the Alabama Great Southern and New Orleans & Northeastern railroads, which serve the pine-producing section in the southern end of the Mississippi Valley, vary from one-half cent to 1 cent per 100 pounds. From stations between Attala, Ala., and York, Ala., excluding York, the proposed rates to Louisville, Henderson, and Owensboro have been increased from 17 cents to 17½ cents, and from stations York to Meridian, Miss., from 19 cents to 19½ cents. To Cincinnati, St. Louis, and Cairo a uniform increase of 1 cent has been made. The average increase to north bank points is less than 1 cent. The proposed adjustment at other points on these lines is similar. Except at the Cairo and Cincinnati crossings it appears that there already exists a spread of at least 1 cent between the north bank and the south bank points. Where such spread already exists no increases to north bank points will be permitted. At crossings where the rates to north bank and south bank points are now the same, an increase of 1 cent in the rates to the former will be permitted. The proposed rates to St. Louis have been justified.

PROPOSED INCREASES IN RATES FROM CHATTANOOGA, TENN.

The only increases which are proposed in the rates from Chattanooga to the Ohio River crossings are such as were necessary to establish a differential of 1 cent between north bank and south bank points at each crossing. The rates have previously been the same to all the crossings, 13 cents per 100 pounds, no difference having been made between the rates to north bank and south bank points. It is now proposed to make the rates to all the north bank points proper 14 cents and the rates to all the south bank points 13 cents, and a similar increase is made in the rates to St. Louis. The following table shows the distances, the present rates, the proposed rates, and the revenues per ton-mile from Chattanooga to the principal crossings:

From Chattanooga, Tenn., to—	Miles.	Present rate.	Revenue per ton-mile.	Proposed rate.	Revenue per ton-mile.
		<i>cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Cincinnati, Ohio.....	338	13	7.7	14	8.3
Louisville, Ky.....	314	13	8.3	13	8.3
Evansville, Ind.....	309	13	8.7	14	9
Paducah, Ky.....	332	13	7.8	13	7.8
Cairo, Ill.....	350	13	7.4	14	8
St. Louis, Mo.....	500	18	7.2	19	7.6
Average.....	357	13½	7.8	14½	8.1

The evidence shows that if the spread between north bank points and the south bank points had been accomplished by reductions rather than increases, corresponding reductions in the rates to and from an important intermediate territory would have been required, and while the present rates are not extraordinarily low, they are not so high as to warrant a finding that the rates to south bank points should be reduced to effect the spread of 1 cent between opposite crossings. We therefore find that the proposed rates have been shown to be reasonable.

INCREASES FROM POINTS ON THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

The Nashville, Chattanooga & St. Louis Railway is primarily a Tennessee line, 899 miles of its total of 1,231 miles of railway being within that state. Tennessee ranks second in the production of oak, hickory, and poplar, and 95 per cent of the lumber handled by this carrier consists of hardwood.

It is proposed to increase by 1 cent the rates to Evansville, Cincinnati, Cairo, and St. Louis. A large number of reductions, ranging from 1 cent to 3½ cents, have been made, principally in the rates to New Albany, Jeffersonville, Brookport, Metropolis, and Louisville.

Exhibits have been filed comparing the proposed rates with others in the same general territory, which tend to show that the proposed rates are not unduly high. A large portion of the territory served by the Nashville, Chattanooga & St. Louis Railway is mountainous and sparsely settled, and there are a large number of branch lines which depend principally upon forest products for their tonnage. The record further shows that comparatively little lumber is produced along the Western & Atlantic, which is operated by the Nashville, Chattanooga & St. Louis Railway. Considering the operating conditions of this road as a whole, it may be said that the rates to the crossings compare favorably with those from points on the Mississippi Valley lines. We therefore find that the proposed rates have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.

INCREASES FROM POINTS ON THE SOUTHERN RAILWAY.

The proposed increases in the rates from points served by the Southern Railway may be divided into three groups: First, rates from the Memphis division, which runs from Chattanooga to Memphis; second, from stations on the Knoxville division between Chattanooga and Knoxville; third, rates from the pine-producing area south of Chattanooga, including the line from Atlanta to Columbus, Miss., the Mobile division from Birmingham to Mobile, and the line from Atlanta to Brunswick, Ga., and its branches.

The Memphis division of the Southern Railway is intersected by the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad, the Mobile & Ohio Railroad, and the Illinois Central Railroad, and the rates carried by these lines from the junction points determine the rates charged by the Southern Railway from the same points. The Commission's Fourth Section Order No. 3275, dated September 29, 1913, gave the Southern Railway permission to charge higher rates from intermediate points than from Memphis and certain junction points, provided a certain relationship was maintained between the rates. The suspended rates from both junction points and intermediate points have been advanced to the same extent, so that the relationship required by the Commission's fourth section order has not been disturbed. The evidence shows that the distances to the Ohio River crossings from points on the Memphis division of the Southern Railway are from 50 to 100 per cent greater in many cases than the rates by the more direct routes. We therefore find that the proposed rates to the north bank Ohio River crossings from points on this division of the Southern Railway have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to opposite south bank crossings.

The increases made in the rates from points on the Knoxville division are in no case in excess of 1 cent per 100 pounds. No change has been made in the rates to any of the south bank points. The record shows that it has been customary to maintain the same rates from Knoxville as from Chattanooga, and the proposed rates from both points as well as from the intermediate points are the same. The suspended rate from Chattanooga and Knoxville to Cincinnati is 14 cents and to Louisville 13 cents, the present rate. We are of opinion and find that the rates from points on the Knoxville division to north bank points have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to south bank points.

The extent of the increases from points on the Mobile division of the Southern Railway is the same as from points on the Mobile & Ohio Railroad serving the same territory. We therefore find that the same increases may be made in rates from stations on the Mobile division of the Southern Railway as have been approved from stations on the Mobile & Ohio Railroad serving the same general territory. From points on and west of the Chattanooga-Pensacola line rates to the Ohio River crossings proper to the north bank crossings have been increased from one-half to 1 cent. The rates to Louisville, however, have also been increased by one-half cent, and this has occasioned an increase of $1\frac{1}{2}$ cents to some north bank points. The evidence of record does not justify the increase of the Louisville rates, nor does it show that in any case the rates to the north bank points should be increased by more than 1 cent. From points east of the Chattanooga-Pensacola line, particularly in Georgia and Florida, increases are proposed similar to those which have already been considered. The average increase to north bank points is 1 cent.

We have previously referred to the fact that a dual system of rates exists in the southeastern territory, the proportional rates to the gateways being in most instances somewhat less than the rates to the crossings proper. Of these proportional rates the one to Cairo is of prime importance because it is lower than any of the others. To practically all points in central freight association territory the rates are made by using the proportional rate to Cairo plus the rate beyond. The increases in the proportional rates from the southeastern territory to the crossings are generally 1 cent.

We are of opinion and find that the proposed increases in both the local and proportional rates from points on the Southern Railway in the southeastern territory to the north bank Ohio River crossings have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to south bank points.

INCREASES FROM POINTS ON THE CENTRAL OF GEORGIA RAILWAY.

From points on the Central of Georgia Railway and its connections there is proposed a uniform advance of 1 cent to most of the north bank points. Except in a few instances, there are no increases to south bank points. The principal producing territory served by this carrier is the pine region of southeastern Alabama and southern Georgia, and a large part of the traffic comes from such branch-line connections as the Atlanta & St. Andrews Bay Railway and the Flint River & Northeastern Railroad. Rates from the branch-line points are from 1 to 1½ cents higher than the rates from stations on the main line, and it is proposed to increase them to the same extent as the rates from the main-line points.

The following table, compiled from one of the exhibits, shows the proposed rates from representative stations on the Central of Georgia Railway, the short-line distances to the principal gateways, and the revenues per ton-mile under the proposed rates:

From—	To Cairo, Ill., proper.			To Louisville, Ky., proper.			To Cincinnati, Ohio, proper.		
	Rates.	Dis- tance.	Revenue per ton- mile.	Rates.	Dis- tance.	Revenue per ton- mile.	Rates.	Dis- tance.	Revenue per ton- mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Albany, Ga.....	23	590	7.80	22	651	6.76	23	685	6.72
Augusta, Ga.....	23	755	6.09	22	717	6.14	23	743	6.19
Coffee Springs, Ala.....	22	712	6.18	21	773	5.43	22	807	5.45
Macon, Ga....	23	590	7.80	22	552	7.97	23	578	7.96
Savannah, Ga...	23	781	5.89	22	743	5.92	23	786	5.85

Another exhibit filed on behalf of the Central of Georgia Railway shows that the proportional rates to Cairo from representative points on the line of that carrier are comparatively low. From Albany, Ga., for example, the proportional rate to Cairo is 16 cents for a distance of 590 miles, making a ton-mile revenue of 5.42 mills. From Dothan, Ala., the rate is 15 cents and the distance 673 miles, making the earnings per ton-mile 4.46 mills. From Savannah, Ga., the rate is 16 cents and the distance 781 miles, yielding a revenue per ton-mile of 4.10 mills. The rates from other points are correspondingly low.

Upon consideration of all the evidence we are of opinion and find that the proposed rates on lumber, both local and proportional, from points on the Central of Georgia Railway and its connections to north bank points have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect to south bank points.

INCREASES FROM ATLANTIC COAST LINE POINTS.

The proposed adjustment on the Atlantic Coast Line is similar to that on the Central of Georgia. The distances to the Ohio River crossings from representative points on the Atlantic Coast Line in Georgia and Florida vary from about 550 to about 800 miles, the proposed rates to the crossings proper from representative Georgia and Alabama points varying from 22 cents to 24 cents. The average ton-mile revenue yielded by the rates from representative points to Cincinnati is 6 mills; to Jeffersonville and New Albany, 6.5 mills; to Cairo proper, 6.7 mills; and to St. Louis, 5.4 mills. Exhibits show that the revenues per ton-mile yielded by these rates are lower than those yielded by the rates from the same territory to equidistant points in North Carolina and Virginia. The proportional rates to Cairo from stations on the Atlantic Coast Line are materially lower than the rates to Cairo proper. While the proposed rates to Cairo proper from representative points in Alabama and Georgia are 22 cents or 23 cents, the suspended proportional rates to Cairo vary from 15 cents to 17 cents. The importance of the proportional rate to Cairo already has been explained.

We are of opinion and find that the proposed increased rates on lumber to the north bank Ohio River crossings and St. Louis have been shown to be reasonable to the extent that they do not exceed by more than 1 cent the rates now in effect.

PROPOSED INCREASES FROM POINTS ON THE LOUISVILLE & NASHVILLE RAILROAD.

The Louisville & Nashville Railroad proposes to make numerous increases in the rates from stations on its line to the Ohio River crossings which it reaches and to St. Louis. Both pine and hardwood are found in abundance on portions of this railroad. Generally speaking, the territory south of Decatur, Ala., produces pine while the territory north of that point produces hardwood. The pine territory south of Decatur is divided into two groups for rate-making purposes. Group 1 embraces the stations from Oakworth, Ala., the first station south of Decatur, to and including Montgomery, Ala.; while group 2 includes all stations south of Montgomery to New Orleans, including branch-line points. The rates from group 2 are 2 cents higher than the rates from group 1, a relationship which has obtained for a number of years. We shall deal first with the proposed increases from these groups.

The present rates to the crossings from the southern part of the pine section are as follows:

To—	Cents.	To—	Cents.
Covington.....	21	New Albany.....	20
Newport.....	21	Henderson.....	19
Cincinnati.....	21	Owensboro.....	19
Louisville.....	19	Evansville.....	20
Jeffersonville.....	21.1	St. Louis.....	21

It will be observed that with the exception of the Cincinnati crossing the rates to north bank points are at least 1 cent higher than the rates to the points located on the south bank. We assume that the differentials in each case represent the bridge tolls at the respective crossings. The rates from group 1, being uniformly 2 cents less than the rates from group 2, show the same differentials. It is proposed to make the Cincinnati rate from group 2 stations 22 cents, continuing the rate of 21 cents to Covington and Newport so as to effect a spread of 1 cent between the two latter points, which are on the south bank, and Cincinnati, which is a north bank point. In the second *Norman Lumber Co. case* we established a differential of $2\frac{1}{2}$ cents as between Cincinnati and Louisville on traffic originating in the southern part of the Mississippi Valley. Since the Mobile & New Orleans branch of the Louisville & Nashville Railroad operates in that territory, the proposed rates have been made to observe that differential, the rate to Louisville being increased from 19 cents to $19\frac{1}{2}$ cents and the rate to Cincinnati from 21 cents to 22 cents.

The present and proposed rates, in cents per 100 pounds, on common lumber from Memphis to the Ohio River crossings are shown below:

From Memphis to—	Present rate.	Proposed rate.	Distance.
	Cents.	Cents.	Miles.
Cincinnati, Ohio.....	15	16	487
Covington, Ky.....	15	15	485
Newport, Ky.....	15	15	485
Louisville, Ky.....	12	12.5	377
Jeffersonville, Ind.....	14	13.5	377
New Albany, Ind.....	13	13.5	377
Owensboro, Ky.....	12	12.5	304
Henderson, Ky.....	11	11.5	300
Evansville, Ind.....	12	12.5	321
St. Louis, Mo.....	12	12.5	485

It will be observed from this table that the present rates from Memphis also include allowances for bridge tolls at all the crossings except Cincinnati. From 35 stations on the Memphis division

directly east of Memphis the rates are the same as from Memphis, and the proposed rates show similar increases.

It is also proposed to increase the rates from territory north of Decatur, north of Tuscumbia, Ala., and also from the stations north of Knoxville. There are comparatively few increases in this territory, most of the rates remaining unchanged. Exhibits filed by the Louisville & Nashville Railroad show that the rates to Cincinnati, Covington, and Newport are the same, but that the rates to the other crossings reflect a bridge toll varying from 1 cent to 2.1 cents.

It is also proposed to increase the rates from Knoxville and points south. The record shows that at the present time the rates from these stations to all the north bank points except Jeffersonville are the same as the rates to the opposite south bank points, and the proposed increases have been made for the purpose of establishing a 1-cent differential between the north bank and the south bank points.

It is also proposed to increase the rates from Nashville and Edgewood, Tenn., which take the same rates to all the crossings. The present rates from Nashville are as follows: To Cincinnati, Covington, and Newport, 13 cents; to Louisville, Owensboro, and Henderson, 9 cents; to Evansville, 10 cents; to Jeffersonville and New Albany, 11.1 cents; to St. Louis, 13 cents. It is proposed to increase the Cincinnati rate from 13 cents to 14 cents, while continuing the 13-cent rate to Covington and Newport in order to effect a 1-cent spread. It is also proposed to increase the Louisville rate from 9 cents to 10 cents.

In order to establish the reasonableness of the proposed rates from the various stations on its line, this respondent has relied chiefly upon a number of exhibits comparing the proposed rates with other rates. Nearly all of the comparisons, however, are with rates applying in a territory which can scarcely be deemed fairly comparable with that served by the Louisville & Nashville Railroad. The reason for this, as given by the respondent, is that practically all of the rates east of the Mississippi River are involved in the present proceeding, so that if comparisons were made between the proposed rates and other rates in the same territory, a comparison would be made between rates all of which are involved in the present proceeding. It is not alleged that the operating conditions on the Louisville & Nashville Railroad are unusually difficult. The rates with which the proposed rates are compared, however, apply between points west of the Mississippi River located in a region which this Commission has expressly recognized as being of such a nature as to warrant the charging of higher rates than the rates in effect east of the Mississippi River. Inasmuch as the rates from practically all of the stations on the Louisville & Nashville Railroad are now higher to north bank points on the Ohio River than the rates to the south bank points, this

carrier is precluded from making the explanation that the increases are proposed for the purpose of making the rates to north bank points include the bridge toll. In other words, this respondent, in order to establish the reasonableness of the increased rates, would have to show that the present rates, excluding the bridge toll, are not sufficiently remunerative. This has not been shown by the evidence of record.

A vigorous protest against the proposed increases in the rates from Nashville to the Ohio River crossings has been made by the Nashville Lumbermen's Club. The distances from Nashville to the various crossings, the present rates, and the revenues per ton-mile yielded thereby are shown in the following table submitted by this protestant:

	Miles.	Rate.	Revenue per ton-mile.	Revenue per loaded car-mile.
		<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Louisville, Ky.....	187	9.0	9.6	23.6
Cincinnati, Ohio.....	301	13.0	8.6	21.1
Owensboro, Ky.....	142	9.0	12.7	31.0
Henderson, Ky.....	145	9.0	12.4	30.1
Evansville, Ind.....	158	10.0	12.7	31.0
St. Louis, Mo.....	323	13.0	8.1	19.7
Average, all freight.....	171	6.66	7.78	15.9

We are of opinion and find that the proposed increases in the rates on lumber from points on the Louisville & Nashville Railroad to the Ohio River crossings and to St. Louis have not been shown to be reasonable, except that rates to north bank points may be increased by not more than 1 cent when such increase is necessary to make the rates to north bank points 1 cent higher than to the opposite south bank points. The proposed rates from Memphis are shown to be reasonable to the extent that they do not exceed those approved herein via other lines.

RATES PROPOSED BY THE ST. LOUIS & SAN FRANCISCO RAILROAD EAST OF THE MISSISSIPPI RIVER.

The St. Louis & San Francisco Railroad operates a line of railway from Birmingham to Memphis. It proposes to increase the rate from about 40 stations on this line to St. Louis, East St. Louis, and the Ohio River crossings. The only points to which the increased rates apply which are reached by this railroad are Memphis, St. Louis, and East St. Louis. The Birmingham-Memphis line is intersected at several points by the direct north and south lines, whose rates to all the crossings are followed by the St. Louis & San Francisco Railroad. Though this carrier reaches St. Louis with its own rails, the Louisville & Nashville Railroad, which is the short line to St. Louis, is said to make the rates to that crossing. To establish the

reasonableness of the proposed rates this respondent relies principally upon the evidence submitted by the north and south lines. We therefore find that the rates proposed are reasonable to the extent that the increases therein do not exceed those herein allowed in the rates to the respective crossings from junction points of this line with those of the north and south lines.

PROPOSED INCREASES FROM WEST SIDE LINES TO OHIO RIVER CROSSINGS.

A number of the lines west of the Mississippi River have rates to the Ohio River crossings which are higher by certain arbitraries than the rates made by the east side lines to the same crossings. From stations on the Vicksburg, Shreveport & Pacific Railway the rates to the crossings have for years been 2 cents higher than the rates from yellow-pine territory in southern Mississippi.

Stations on the Southern Pacific system lines in Louisiana are divided into three groups. Group 1 consist of all stations from New Orleans to Alexandria on Morgan's Louisiana & Texas Railroad, and the rates are uniformly 2 cents higher than the rates made by the east side lines from New Orleans to the Ohio River crossings. Group 2 includes all stations on the Louisiana Western Railway from Scotts to Sabine River. Group 3 includes all stations on Lake Charles & Northern Railroad, L. W. Junction to Nitram, inclusive. From the last two groups the rates are generally 3 cents higher than the rates from New Orleans. A few departures from this basis exist in those instances where the line of this carrier is intersected by the direct north and south lines. The average distance from group 1 points to New Orleans is 135 miles and from groups 2 and 3 the average distance is 249 miles.

The rates from stations on the Texas & Pacific Railway are similarly grouped. From Harvey, La., the first station west of New Orleans, the rate is 1 cent higher than the rate from New Orleans. From a large number of stations west of Harvey, the average distance from which to New Orleans is 187 miles, the rate is 2 cents higher than the rate from New Orleans.

The evidence shows that the arbitraries over the New Orleans rate charged by these western lines are not unreasonable. They will, therefore, be permitted to increase their rates to the Ohio River crossings to the same extent that the increases proposed by the east side lines are approved in this report.

PROPOSED INCREASES IN EASTBOUND RATES FROM CINCINNATI.

In *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, at page 578, we said:

In conformity with *Williams Co. v. V., S. & P. Ry. Co.*, *supra*, we hold that, while the present differentials may be proper for points involved in this part of 34 I. C. C.

the complaint which are within 500 miles of Cincinnati, the rates from Louisville to the points of destination over 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than 2½ cents per 100 pounds.

The rates from Louisville to points in trunk line territory when the decision in the above case was rendered were generally 3½ cents higher than the rate from Cincinnati. The northern lines propose to effect the prescribed relationship by increasing the rates from Cincinnati by 1 cent. After the tariffs carrying these proposed increases were published we issued our report in the *Five Per Cent case*, in which an increase of 5 per cent was permitted in the rates on lumber from both Louisville and Cincinnati to trunk line points. The situation is set forth in part in the following table, compiled from one of respondents' exhibits:

Statement showing record of rates on lumber, carloads, from Cincinnati and Louisville, Ky., to central freight association territory and trunk line points prior to and subsequent to decision in *Norman Lumber Co. v. L. & N. R. R. Co. et al.*, 29 I. C. C., 565.

To—	Rates in effect at time decision in <i>Norman Lumber Co.</i> case was rendered.				Rate from Louis- ville, Ky., based on 5 per cent advance.	Rate from Cincin- nati, Ohio—	
	From Louis- ville, Ky.		From Cincin- nati, Ohio.			Based on 5 per cent advance.	Proposed in the present case.
	Miles.	Rate.	Miles.	Rate.			
		<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Wheeling, W. Va.....	372	14.0	258	10.0	14.7	10.5	11.0
Pittsburgh, Pa.....	427	14.0	313	10.0	14.7	10.5	11.0
Buffalo, N. Y.....	560	14.0	446	10.0	14.7	10.5	11.0
Salamanca, N. Y.....	574	14.0	460	10.0	14.7	10.5	11.0
New Castle, Pa.....	428	14.0	314	10.0	14.7	10.5	11.0
Youngstown, Ohio.....	413		299				
Sharon, Pa.....	427		313				
Rochester, N. Y.....	628	16.5	514	12.5	17.5	13.5	14.0
Albany, N. Y.....	857	21.5	743	18.0	22.7	19.2	19.0
Utica, N. Y.....	762	20.0	648	16.5	21.2	17.7	17.5
Syracuse, N. Y.....	708	18.0	594	14.5	18.9	15.0	15.5
Reading, Pa.....	730	20.5	616	17.0	21.6	18.3	18.0
Harrisburg, Pa.....	676	19.5	562	16.0	20.6	17.3	17.0
Baltimore, Md.....	707	19.5	593	16.0	20.6	17.3	17.0
Philadelphia, Pa.....	780	20.5	666	17.0	21.6	18.3	18.0
New York, N. Y.....	871	22.5	757	19.0	23.6	20.5	20.0
Boston, Mass.....	1,059	24.5	945	21.0	25.6	22.5	22.0

Rochester, N. Y., is the first point which is more than 500 miles from Cincinnati and is therefore the first point affected by the decision referred to. The figures in the last column show the proposed rates, but they do not take into consideration the increases permitted in the *Five Per Cent case*. It appears from the testimony of respondents' witnesses that it is the carriers' purpose to add 5 per cent to the Louisville rates and arrive at the Cincinnati rates by deducting 2½ cents. This results in material increases in the rates from Cincinnati. To illustrate: The rate formerly in effect from Louisville to New York was 22.5 cents and from Cincinnati to New

York 19 cents. Our decision in the *Five Per Cent case* permitted respondents to increase the Louisville rate to 23.6 cents. If 2½ cents be deducted from this rate to arrive at the Cincinnati rate, the result is 21.1 cents, an increase of 2.1 cents, or 11 per cent over the rate of 19 cents previously in effect. The rate to Rochester would similarly be increased from 12.5 cents to 15 cents. While no readjustment in the rates from Louisville and Cincinnati to western termini points was required by our decision in the *Norman Lumber Co. case*, the above table shows that it is proposed to increase the rates from Cincinnati to those points from 10 cents to 11 cents. Group rates apply to the western termini from both Louisville and Cincinnati. The rate from Louisville was 14 cents prior to our decision in the *Five Per Cent case*, and in consequence of that decision it became 14.7 cents. The respondents propose to arrive at the Cincinnati rate by deducting 3 cents from the Louisville rate, though the spread was formerly 4 cents, so that the rate from Cincinnati to all the western termini points will be increased from 10 cents to 11.7 cents. Our decision in the *Norman Lumber Co. case* did not require these increases, but the respondents explained that they have been made "because the carriers desire to maintain as closely as possible the relative adjustment as between the termini points and the first station point covered by the Commission's decision in the *Norman Lumber Co. case*," and also because the carriers have long thought that the rates were too low. The average distances from Cincinnati and Louisville to the western termini points are 343 miles and 457 miles, respectively, and the earnings per ton-mile under the proposed rates 6.8 mills and 6.4 mills.

To establish the reasonableness of the proposed rates, and especially to show that the desired readjustment should be effected without reductions in the rates from Louisville, the respondents rely chiefly upon several exhibits which show the rates and earnings on lumber from Ohio and Mississippi river crossings to eastern points. These exhibits show that the ton-mile earnings yielded by the rates from Louisville are practically the same as the rates from more distant crossings, such as Evansville, Cairo, and East St. Louis, and in some cases lower, and it is argued from this that there should be no reduction in the rates from Louisville. While this contention is not without merit, it obviously does not establish the reasonableness of the proposed increased rates from Cincinnati. The protestants show that under the Commission's supplemental order in the *Five Per Cent case* the carriers were permitted to increase the rates from Cincinnati to points in trunk line territory somewhat more than 5 per cent in order to maintain the relationship which had previously existed between Lexington, Ky., and Cincinnati. It is

shown, for example, that the rate from Cincinnati to Boston was formerly 21 cents; that a 5 per cent increase would have made the rate 22.05 cents, whereas the actual increase is $1\frac{1}{2}$ cents, making the rate 22 $\frac{1}{2}$ cents. The rates to New York and related points had similarly been increased by $1\frac{1}{2}$ cents, although a 5 per cent increase of the former 19-cent rate would have been slightly less than 1 cent.

The protestants further point out that evidence submitted in the *Five Per Cent case* shows that the average revenue earned by 69 carriers in official classification territory on lumber in October, 1913, for an average distance of 187 miles, was 5.4 mills, which is considerably less than the earnings under the proposed rates for much greater distances.

There is no evidence of record which would warrant the conclusion that the present rates are not remunerative. They have been increased by more than 5 per cent within the past six months, and, as so increased, they are at least as high as other rates in the same territory.

If the readjustment should be accomplished by retaining the rates from Cincinnati to points in trunk line territory, as increased as a result of the decision in the *Five Per Cent case*, and adding thereto $2\frac{1}{2}$ cents to arrive at the rates from Louisville, most of the rates from Louisville would still be slightly higher than they were prior to the 5 per cent increase, as is shown in the following table:

From Louisville, Ky., to—	Miles.	Rates in effect prior to 5 per cent increase.	Rates made by adding $2\frac{1}{2}$ cents to Cincinnati rates.
		Cents.	Cents.
Rochester, N. Y.....	628	16.5	16.0
Albany, N. Y.....	857	21.5	21.7
Utica, N. Y.....	762	20.0	20.2
Syracuse, N. Y.....	708	18.0	17.5
Reading, Pa.....	730	20.5	20.8
Harrisburg, Pa.....	676	19.5	19.8
Baltimore, Md.....	707	19.5	19.8
Philadelphia, Pa.....	780	20.5	20.8
New York, N. Y.....	871	22.5	23.0
Boston, Mass.....	1,059	24.5	25.0

We are of opinion and find that the rates on lumber in carloads from Cincinnati to western termini and points in trunk line territory should not exceed the rates as increased in consequence of our decision in the *Five Per Cent case* and the orders supplementary thereto.

SUMMARY.

The respondents have not justified the proposed increased rates on yellow pine from the southwestern blanket to Thebes, Cairo, St. Louis, and East St. Louis, nor has the reasonableness of the proposed

southbound rates west of the Mississippi River been established. It has been shown that there are no transportation reasons for according lower rates to hardwoods than to yellow pine, and all the proposed increased rates on hardwood from west of the river which do not exceed the present rates on yellow pine will be permitted to take effect.

East of the Mississippi River we have permitted the respondents to increase their rates to north bank Ohio River crossings by not more than 1 cent in those instances in which such increases are necessary to effect a spread of 1 cent between the rates to opposite crossings, in accordance with our conclusions in the so-called *Ohio River cases*. In no case should the rates to north bank points be increased more than is necessary to make the rates to those points 1 cent higher than the rates to the opposite south bank points. For example, if the present spread is one-half cent the increase to the north bank point should not exceed one-half cent.

The record shows that cottonwood and gum are not entitled to lower rates than other kinds of hardwood, and the proposed rates on cottonwood and gum have been permitted in all cases in which they do not exceed the rates on other hardwoods. In no case should the rates on cottonwood and gum, or the rates on other hardwoods, exceed the rates on yellow pine.

In order to give effect to our findings herein, and to avoid confusion, it will be necessary for the respondents to cancel all the tariffs now under suspension, and an order will be entered accordingly. Tariffs conforming to our findings herein may be filed to become effective on five days' notice to the public and the Commission.

COMMISSIONER HARLAN took no part in the decision of this case.

34 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 184.
NORTHBOUND RATES ON HARDWOOD FROM THE
SOUTHWEST.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTION OF HARDWOOD AND OTHER KINDS OF LUMBER AND ARTICLES MANUFACTURED THEREFROM, FROM POINTS IN ARKANSAS, LOUISIANA, AND OTHER POINTS, TO MEMPHIS, TENN., ST. LOUIS, MO., AND OTHER POINTS OF DESTINATION.

Submitted April 14, 1915. Decided July 12, 1915.

Upon reconsideration of the record in the light of the reargument based thereon and on the record in *Rates on Lumber from Southern Points*, 34 L. C. C., 652, *Held*, That our conclusions expressed in *Northbound Rates on Hardwood*, 32 I. C. C., 521, should not be changed.

W. F. Dickinson for respondents.

R. V. Fletcher for Illinois Central Railroad Company.

E. A. Haid for St. Louis Southwestern Railway Company.

Robert Kelley for Kirby Lumber Company.

S. D. Snow for International Harvester Company and Wisconsin Lumber Company.

T. M. Henderson for Nashville Lumbermen's Club.

S. F. Andrews for Lumbermen's Exchange of St. Louis and various manufacturers and dealers in that city.

H. R. Small for Lumbermen's Exchange of St. Louis, Cooperage Traffic Association, and Cairo Board of Trade.

L. M. Walter for Southern Hardwood Traffic Association and yellow-pine manufacturers west of the Mississippi River.

G. B. Webster for Ozark Cooperage & Lumber Company, Mill Shoals Cooperage Company, Bowles McBride Cooperage Company, Gideon Cooperage Company, and United States Stave & Handle Company.

J. R. Walker for Southern Hardwood Traffic Association.

REPORT OF THE COMMISSION ON REARGUMENT.

HALL, Commissioner:

Our second report in this proceeding, *Northbound Rates on Hardwood*, 32 L. C. C., 521, held that the respondents had, with few exceptions, justified certain increased rates on hardwood from south-

western points of production to northern destinations. At that time testimony was being taken in *Rates on Lumber from Southern Points*, 34 I. C. C., 652, involving advances on lumber generally from the south and southwest, and decided contemporaneously herewith. The protestants at once made informal application for further consideration of the issues herein, and subsequently filed formal petitions praying for rehearing and reargument. From these it appeared that the protestants desired a disposition of those issues upon the new record, that made in *Rates on Lumber from Southern Points*, *supra*. The matter is now submitted upon reargument ordered and heard in connection with the argument of that proceeding.

Viewing the issues here in the light of the records in both proceedings, the Commission sees no reason why its previous conclusions should be changed. It is fair to say that protestants now rely chiefly upon their showing of a severe depression in the lumber industry. There was testimony of such depression in the record herein, and much more in the record in *Rates on Lumber from Southern Points*, *supra*. But in so far as it may affect the rates here involved, the Commission can say no more than was said in our second report herein, *supra*, at pages 528 and 529.

Many other points were urged in the petitions. All were considered, and to some we will briefly advert. We find that our former conclusions as to the value of gum lumber are entirely in accord with the record herein and corroborated by the record in *Rates on Lumber from Southern Points*, *supra*. The hardwood rates held to have been justified in *Northbound Rates on Hardwood*, *supra*, do, as petitioners claimed, widen the margin between the rates available to mills located north and south, respectively, of the Arkansas River, but they also narrow the rate margins between the several hardwood groups involved herein, i. e., those lying south of the Arkansas River.

The petitioners dispute the finding that under the former rate adjustment hardwood moved in considerable volume from mills in the extreme southwest, where hardwood and yellow pine took the same rate. It is not denied that there was uncontroverted testimony herein of such a movement, but the lack of statistics of movement is criticized, and the record in the later proceeding is pointed to as showing a denial by the lumbermen of such a movement. There is the same lack of definite statistics on this point in *Rates on Lumber from Southern Points*, *supra*, as is the case here. But in so far as the statistical evidence in both records may be utilized to gauge the actual movement, it would appear that our original statement, based, as it was, on direct and uncontroverted testimony by a competent witness, was not in error. The statistical evidence shows beyond doubt that the hardwood movement from that group where the hardwood rate

approaches most closely to the yellow-pine rate without meeting it is very heavy indeed.

Much importance is attached by petitioners to the fact that the average haul on hardwood moving on the yellow-pine rate from mills in the so-called yellow-pine blanket territory is less than the average haul on yellow pine moving from that blanket territory to the same destinations. But this fact was clearly before us. The statistics of movement showed it, and the carriers admitted it. It must be remembered, however, that there is an even greater difference between the hauls of yellow pine from the mills in the northern and the mills in the southern parts of the yellow-pine blanket. Our former conclusion was based largely upon the finding that, in a qualified sense and from a transportation viewpoint, "lumber is lumber" in this region. The yellow-pine blanket rate had been accepted as reasonable, and there followed naturally the conclusion that the proposed increased rates on hardwood were proper in so far as they did not exceed the yellow-pine rate as maximum and otherwise conformed to such groupings as had been justified.

The effect of our orders in the *Tap Line cases*, 23 I. C. C., 277, 549, is again urged upon our attention. It seems sufficient to repeat that tap-line divisions were not as general or liberal on hardwood as on yellow pine.

Other points were advanced in the petitions, but they invite a different conclusion upon the same facts and need not be discussed in detail. The proceeding, as reopened upon the petition of these protestants, will be dismissed.

24 I. C. C.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

2410. **IN THE MATTER OF DIVISIONS OF JOINT RATES FOR TRANSPORTATION OF STONE FROM POINTS IN INDIANA TO POINTS IN OTHER STATES.** *J. H. Marble* for Interstate Commerce Commission. *E. Barton, W. R. Gardner, J. B. Cockrum, H. S. Young, E. C. Field, G. W. Kretzinger, W. M. Duncan,* and *S. W. Howland* for defendants. Dismissed July 1, 1915.

4561. **SECHRIST MANUFACTURING CO. ET AL. v. O.-W. R. R. & N. Co.** Rates on l. c. l. shipments of gas and electric light fixtures, etc., from Denver, Colo., to Portland, Oreg. *A. J. Parrington* for complainants. *F. C. Dillard* and *A. C. Spencer* for defendants. Dismissed on request of complainants, May 29, 1915.

4594. **GREATER DES MOINES COMMITTEE v. U. P. R. R. Co. ET AL.** Class rates from Des Moines, Iowa, to Colorado and Utah common points. *F. L. Lehmann, jr.*, for complainant. *W. F. Dickinson, W. T. Hughes, R. B. Scott, H. A. Scandrett, C. C. Wright, T. J. Norton, H. G. Herbel,* and *Winston, Payne, Strawn & Shaw* for defendants. Dismissed on request of complainant, June 28, 1915.

5488. **OMAN BOWLING GREEN STONE CO. v. N. Y. C. & H. R. R. Co. ET AL.** Rates on limestone from Bowling Green, Ky., to New York City and other eastern destinations. *T. W. & R. C. P. Thomas* for complainant. *E. Barton, H. L. Bond, W. F. Peter, H. R. Kurrie, H. S. Young, Squires, Sanders & Dempsey, O. E. Butterfield, A. P. Burgwin, L. E. Hinkle, C. Brown, W. C. Coleman, C. Heebner,* and *E. D. Hotchkiss* for defendants. Dismissed without prejudice, July 1, 1915.

5977. **NATIONAL CLASSIFICATION COMMITTEE OF LUMBER, WOODEN BOXES, AND ALLIED INTERESTS v. A. & S. RY. Co. ET AL.** Rules and regulations in western, official, southern, and transcontinental classification, governing shipment of articles in fibreboard, pulpboard, and corrugated strawboard packages. Dismissed May 24, 1915.

6065. **KALAMAZOO TANK & SILO CO. v. M. C. R. R. Co. ET AL.** Rates on wood silos, k. d., from Kalamazoo, Mich., to various Illinois destinations and Davenport, Iowa. *G. J. Bolender* for complainant. *Winston, Payne, Strawn & Shaw, W. H. Bremner, F. M. Miner, O. W. Dynes, C. C. Wright, R. H. Widdicombe, R. B. Scott, O. E. Butterfield, C. Brown, A. P. Humburg,* and *R. V. Fletcher* for defendants. Transferred to Special Docket for adjustment, June 11, 1915.

6385. **WALKER MFG. Co. v. S. P. Co.** Rates on fresh meats and packing-house products from Austin, Tex., to various interstate destinations. *A. M. Scott* for complainant. *J. R. Christian, F. R. Dalzell, T. H. Wilhelm, J. F. Garvin, J. M. King,* and *H. M. Hogsett* for defendants. Complaint satisfied. Dismissed June 7, 1915.

6391. **GERMAN AMERICAN CAR CO. v. ERIE R. R. Co. ET AL.** Rates on iron car bolsters from Glassport, Pa., to Warren, Ohio. *G. M. Stephen* and *S. J. Bolton* for complainant. *W. W. Collins, jr.*, for defendants. Dismissed for want of prosecution, May 24, 1915.

6430. **MAGILL & Co. v. C., M. & ST. P. RY. Co.** Rates on seed wheat and oats from Fargo, N. Dak., to Watauga, S. Dak. *F. O. Gibbs* for complainant. *C. P. Peterson* and *R. C. Fyfe* for defendants. Transferred to Special Docket for adjustment, June 3, 1915.

6487. **COLONIAL SUGARS Co. v. L. Ry. & Nav. Co.** Claim for refund of dunnage supplied in cars loaded with sugar shipped from Gramercy, La., to various destinations. *R. B. Montgomery* for complainant. *E. C. D. Marshall* for defendant. Transferred to Special Docket for adjustment, June 1, 1915.

6789. **MONONGAHELA RIVER CONSOLIDATED COAL AND COKE Co. v. UNION R. R. Co. ET AL.** Cancellation of through rates with the Union Railroad. *C. M. Johnston* for complainant. *C. S. Belsterling, F. L. Ballard, D. P. Connell, and H. M. Matthers* for defendants. Dismissed without prejudice, July 1, 1915.

6965. **CEDAR RAPIDS GRAIN Co. v. C., P. & St. L. R. R. Co.** Rates on oats from Peoria, Ill., to Birmingham, Ala. *J. D. Stewart, and J. E. Bromwell* for complainant. *H. L. Child and E. D. Mohr* for defendants. Dismissed on motion of complainant, July 3, 1915.

6973. **LEXINGTON MILL AND ELEVATOR Co. ET AL. v. U. P. R. R. Co. ET AL.** Rates on corn and wheat from Nebraska points to points in Wyoming, Colorado, and Utah. *W. H. Young* for complainants. *C. B. Matthai, E. P. Smith, and C. J. Lane* for defendants. Complaint satisfied. Dismissed, May 29, 1915.

7172. **BYERS BROS. & Co. ET AL. v. U. P. R. R. Co. ET AL.** Rates on live stock from points in Kansas and Colorado on the U. P. R. R. east of the Colorado common points to St. Joseph, Mo. *H. G. Krake* for complainants. *H. A. Scandrett, H. G. Kaill, B. F. E. Marsh, and A. E. Helm* for defendants. Dismissed on motion of complainants, May 10, 1915.

7290. **UNITED STATES v. A., T. & S. F. Ry. Co. ET AL.** Rates on stamped envelopes and newspaper wrappers from Dayton, Ohio, to various interstate points in the United States. *J. Stewart* for complainant. *D. L. Meyers, M. R. Waite, T. H. Burgess, R. W. Moore, W. H. Fowle, C. P. Stewart, R. D. Hunter, E. R. Coleman, and W. E. Boyer* for defendants. Dismissed on motion of complainant, May 24, 1915.

7404. **AMERICAN CEMENT PLASTER Co. v. L. S. & M. S. Ry. Co. ET AL.** Rates on plaster board from Grand Rapids, Mich., to points in C. F. A. territory. *E. L. Ewing, J. E. MacLeish, S. D. Bishop, H. G. Wilson, J. M. Belleville, and W. N. Webb* for complainants. *D. P. Connell, L. R. Hayes, R. P. Patterson, J. Cameron, W. H. Spicer, and H. R. Griswold* for defendants. Dismissed on motion of complainant, July 1, 1915.

7502. **CALIFORNIA ICE Co. v. M., St. P. & S. Ste. M. Ry. Co. ET AL.** Rates on ice from Antioch, Ill., and various Wisconsin points to Chicago, Ill. No appearance for complainant. *W. A. Hayes, K. F. Burgess, and L. C. Mahoney* for defendants. Dismissed for want of prosecution, May 29, 1915.

7510. **KING LUMBER & MFG. Co. v. C., M. & St. P. Ry. Co. ET AL.** Rates on machinery from Beloit, Wis., to Nocatee, Fla. *W. J. Lafferty* for complainant. *L. J. Stackney and O. W. Dynes* for defendants. Transferred to Special Docket for adjustment, May 14, 1915.

7517. **STANDARD OIL Co. v. C. & N. W. Ry. Co. ET AL.** Reasonableness of demurrage and storage charges assessed on shipments of gasoline at points in Illinois, Iowa, and Wisconsin, transported from Whiting, Ind., and Sugar Creek, Mo. *E. Bogardus* for complainant. *C. C. Wright and R. H. Widdicombe* for defendants. Transferred to Special Docket for adjustment, July 7, 1915.

7576. **MOUNT PLEASANT FERTILIZER Co. v. L. & N. R. R. Co.** Rates on cottonseed meal from Sheffield, Ala., to Mount Pleasant, Tenn. *G. M. Stephen* for complainant. *W. A. Colston and W. A. Northcutt* for defendant. Transferred to Special Docket for adjustment, May 27, 1915.

7600. **ZELNICKER SUPPLY Co. v. P. R. R. Co.** Rates on iron storage tanks from Buffalo, N. Y., to Jacksonville, Fla., and Columbia, S. C. *J. D. Fidler* for complainant. *F. H. Behring* for S. Ry. Co. Dismissed on motion of complainant, June 30, 1915.

7659. **COMMERCIAL CLUB OF OMAHA v. A., T. & S. F. RY. CO. ET AL.** Rates on alcoholic liquors from Omaha, Nebr., to Montana common points, Pacific coast points and Spokane, Wash. *E. J. McVann* for complainant. *O. W. Dynes, Hawkins & Franklin, J. B. Sheean, H. A. Scandrett, P. L. Williams, J. L. Finnerty, N. H. Loomis, R. Dunlap, T. J. Norton, E. Hadley, C. H. Carey, J. B. Kerr, C. A. Hart, R. B. Scott, W. F. Dickinson, A. P. Matthew, E. N. Clark, A. C. Spencer, A. W. Hawkins, F. H. Wood, C. W. Durbrow, G. D. Squires, H. G. Herbel, and F. G. Wright* for defendants. Dismissed on motion of complainant, July 1, 1915.

7687. **METROPOLITAN BRANCH COMMUTERS' ASSO. v. B. & O. R. R. CO.** Passenger fares between Washington, D. C., and points west of Rockville, Md., on the Metropolitan Branch of the B. & O. R. R. *J. B. Daish* and *J. R. Hoover* for complainant. No appearance for defendant. Dismissed on motion of complainant, June 7, 1915.

7695. **BUSINESS MEN'S LEAGUE OF ST. LOUIS v. C., B. & Q. R. R. CO.** Rates on boots and shoes from St. Louis, Mo., to Atlanta, Ga. *P. T. Bryan* for complainant. *H. G. Herbel, F. G. Wright, C. C. P. Rausch, W. K. Vandiver, and N. W. Proctor* for defendants. Dismissed without prejudice, June 7, 1915.

7720. **FISH & CO. v. S. A. L. RY. ET AL.** Rates on cabbage in hampers from Palmetto, Fla., to Chicago, Ill. *F. J. McKeown* for complainant. *R. W. Moore* for defendants. Dismissed on motion of complainant, June 7, 1915.

7834. **HOFFMAN & CO. v. Y. & M. V. R. R. CO. ET AL.** Rate on potatoes from Gramercy, La., to Cleveland, Ohio. *A. L. Bishop* for complainant. *E. S. Ballard, O. E. Butterfield, A. P. Humburg, R. V. Fletcher, and R. W. Moore* for defendants. Dismissed on motion of complainant, May 29, 1915.

7842. **SEAGRAVE CO. v. H. V. RY. CO. ET AL.** Rates on combination hose wagons with chemical engines attached from South Columbus, Ohio, to Birmingham, Ala. *J. F. Stone* for complainant. *T. J. Hackney* and *R. W. Moore* for defendants. Dismissed on motion of complainant, June 7, 1915.

7855. **BUTLER PAPER CO. v. C. P. RY. CO.** Rates on news print paper from Millinocket, Maine, to Akron, Ohio. *R. W. Campbell* for complainant. *E. B. Pollock, G. E. Wicks, T. H. Burgess, M. B. Pierce, E. L. Ballard, and O. E. Butterfield* for defendants. Dismissed on motion of complainant, July 3, 1915.

7868. **COAL OPERATORS' TRAFFIC BUREAU v. B. & O. S. W. R. R. CO.** Rules and regulations governing the reconsignment of coal and coke on the B. & O. S. W. R. R. Co. *R. W. Ropiequet* for complainant. *E. Barton* for defendant. Dismissed on motion of complainant, June 7, 1915.

7875. **GODDARD PICKLE & PRESERVE CO. v. I. T. R. R. CO. ET AL.** Rates on pickle and prescription bottles from Alton, Ill., to Ogden, Utah. *H. W. Prickett* for complainant. *N. H. Loomis* and *H. A. Scandrett* for defendants. Transferred to Special Docket for adjustment, May 18, 1915.

7898. **MASON CITY HIDE & FUR CO. v. M. & ST. L. R. R. CO.** Rates on hides and tallow from Mason City, Iowa, to Chicago, Ill. *G. Wrightman* for complainant. *W. H. Bremner, F. M. Miner, C. C. Wright, and R. H. Widdicombe* for defendants. Dismissed on motion of complainant, July 3, 1915.

7907. **NEW MONARCH MACHINE & STAMPING CO. v. O., M. & ST. P. RY. CO.** Rates on iron silo material from Des Moines, Iowa, to Detroit, Minn. *G. Wrightman* for complainant. *C. C. Wright, R. H. Widdicombe, J. B. Sheean, O. W. Dynes, and C. Donnelly* for defendants. Complaint satisfied. Dismissed, June 30, 1915.

7928. **CITIZENS' LUMBER CO. v. O., R. I. & P. RY. CO. ET AL.** Rate on tarred felt building paper from Marseilles, Ill., to Exline, Iowa. *G. Wrightman* for complainant. *R. B. Scott* and *W. F. Dickinson* for defendants. Dismissed on motion of complainant, June 30, 1915.

7967. **WEBB GRANITE & CONSTRUCTION CO. v. B. & M. R. R.** Rates on grout from Fitzwilliam and Webb, N. H., to Worcester, Mass. *H. A. Rosseau* for complainant. No appearance for defendant. Transferred to Special Docket for adjustment, July 23, 1915.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN FORMAL BUT UNREPORTED DECISIONS DURING THE TIME COVERED BY THIS VOLUME.

5689. **LOWE Co. v. C., M. & St. P. Ry. Co. ET AL.** Rates on steel articles from Chicago, Ill., to Ogden, Utah, not found unreasonable. *J. G. Willis* for complainant. *G. H. Smith* for defendants. March 8, 1915. Complaint dismissed.

6100. **CRILLY v. E. P. & S. W. R. R. Co. ET AL.** Unreasonable rates on cattle from Hermanas, N. Mex., to South Omaha, Nebr. *B. H. Dunham* for complainant. *H. L. McReynolds* for defendants. March 18, 1915. Reparation for \$30.90.

6577. **PARKINSON COKE & COAL Co. v. N. Y. C. & H. R. R. Co. ET AL.** Unreasonable rates on coke from Geneva, N. Y., to Brooklyn, N. Y. *Parker, Davis, Wagner & Walton* for complainants. *J. M. Sternhagen* for defendants. March 18, 1915. Reparation to be awarded on presentation of proper proof.

I. & S. 371. **CEMENT RATES FROM ADA, OKLA.** Rates under suspension required to be canceled. No appearances. April 5, 1915. No reparation.

6326. **JOHNSON & WIMSATT v. G. S. & F. Ry. Co. ET AL.** Unlawful charges for switching lumber at Washington, D. C. *J. R. Walker* and *F. B. Larson* for complainant. *F. D. McKenney, W. C. Carpenter,* and *M. P. Callaway* for defendants. March 18, 1915. Reparation for \$50.24.

6371. **OLIVER-FINNIE Co. v. P. & R. Ry. Co. ET AL.** Rates on coconuts from Philadelphia, Pa., to Memphis, Tenn., not found unreasonable. *G. M. Stephen* for complainant. *R. L. Russell, M. C. Hall,* and *R. W. Moore* for defendants. March 22, 1915. Complaint dismissed.

6401. **HIRSCH & SONS IRON & RAIL Co. v. N. Y., N. H. & H. R. R. Co. ET AL.** Rates on condemned Government property from South Framingham, Mass., to St. Louis, Mo., not found unreasonable. *L. B. Hirsch* for complainant. *S. S. Perry* and *H. E. Watt* for defendants. March 18, 1915. Complaint dismissed.

6407. **ROESSLER & HASSLACHER CHEMICAL Co. v. C. & O. Ry. Co. ET AL.** Unreasonable rates on ferrosilicon from Newport News, Va., to Vandergrift, Pa. *Hunt, Hill & Betts* and *J. W. Crandall* for complainant. *W. S. Bronson* for defendants. March 18, 1915. Reparation for \$295.91.

4173. **WALRATH & SHERWOOD LUMBER Co. v. C. R. I. & P. Ry. Co. ET AL.** Unreasonable rates on lumber from points in Louisiana and Arkansas to points in western Nebraska. No appearances. March 18, 1915. Order of dismissal previously entered herein vacated and set aside and reparation awarded for \$72.49.

4588. **CUMBERLAND GROCERY Co. v. L. & N. R. R. Co.** Reparation denied on shipments of sugar from New Orleans, La., to Lebanon, Ky. *J. V. Norman* for complainant. *W. A. Northcutt* for defendant. March 22, 1915. Complaint dismissed.

5710. **HARWOOD-YANCEY-RHEA Co. v. L. & N. R. R. Co.** Reparation denied on shipments of sugar from New Orleans, La., to Nashville, Tenn. *G. M. Stephens* and *S. J. Bolton* for complainant. *N. W. Proctor, J. M. Dewberry,* and *E. M. Mohr* for defendant. March 18, 1915. Complaint dismissed.

716 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

5866. **LINDSAY-WALKER CO. ET AL. v. SO. PAC. CO. ET AL.** Unreasonable rates on fruits from points in California to Billings, Mont. *L. M. Tracy* and *H. S. Hepner* for complainants. *E. and R. B. Scott* for defendants. March 18, 1915. Rates ordered to be reduced.

6176. **COMLEY LUMBER CO. v. COLO. & SO. RY. CO. ET AL.** Rates on lumber from Texline, Tex., to Clayton, N. Mex., not found unreasonable. *J. D. Houston* and *C. H. Brooks* for complainant. *E. E. Whitted* and *A. S. Brooks* for defendants. March 18, 1915. Complaint dismissed.

6198. **CAMERON & CO., INC., v. ST. L. & S. F. R. R. CO. ET AL.** Unreasonable rates on pine doors from Memphis, Tenn., to New Albany, Miss. *C. W. Payne* for complainant. *Thomas Bond* and *J. F. Garvin* for defendants. March 18, 1915. The differential in the rate on pine doors should not exceed the rate on lumber by more than 3 cents per 100 pounds. Reparation for \$46.85.

6395. **PROVIDENCE FRUIT & PRODUCE EXCHANGE v. AMERICAN EXPRESS CO. ET AL.** Unreasonable express charges on strawberries from Medina, Tenn., to Providence, R. I. *G. W. Collier* for complainant. *T. B. Harrison* for defendants. March 18, 1915. Reparation to be awarded on presentation of proper proof.

6402. **SCATTERGOOD & CO. v. N. Y., O. & W. RY. CO. ET AL.** Demurrage charges on oats at Lyons, N. Y., not found unlawful. *J. K. Scattergood* for complainants. *C. L. Andrus* and *J. M. Sternhagen* for defendants. March 18, 1915. Complaint dismissed.

6406. **JACKSONVILLE MACHINE WORKS v. C. OF G. RY. CO. ET AL.** Rates on machinery from Peru, Ga., to Jacksonville, Fla., not found unreasonable. *W. J. Lafferty* and *M. B. Jennings* for complainant. *C. J. Rixey, jr.*, for defendants. March 18, 1915. Complaint dismissed.

6432. **WILCOX v. FLA. EAST COAST RY. CO.** Rates on potatoes and hay between Jacksonville, Fla., and Seely Creek, N. Y., not found unreasonable. *H. D. Wilcox* for complainant. *R. W. Moore* and *W. H. Fowle* for defendant. March 18, 1915. Complaint dismissed.

6439. **PULP & PAPER MNFR'S. ASSO. v. D., S. S. & A. RY. CO. ET AL.** Rates on pulp wood from points in Michigan to points in Wisconsin not found unreasonable. *F. J. Streychmans* for complainant. *A. E. Miller*, *J. E. Tracy*, *C. C. Wright*, *R. H. Widdicombe*, *A. F. Cleveland*, *A. H. Lossow*, and *O. W. Dynes* for defendants. March 18, 1915. Complaint dismissed.

6499. **GIESLER & CO. v. A., T. & S. F. RY. CO. ET AL.** Rates on wagon brakes in western and official classifications not found unreasonable. *J. H. Henderson* and *B. L. Jacobson* for complainants. *R. C. Fyfe*, *R. N. Collyer*, and *D. P. Connell* for defendants. March 18, 1915. Complaint dismissed.

6575. **NICHOLS ET AL. v. A., T. & S. F. RY. CO. ET AL.** Rates on motorcycles from Milwaukee, Wis., to Wichita, Kans., not found unreasonable. *I. N. De La Mater*, and *D. C. Moffitt* for complainants. *T. J. Norton*, *A. A. Hurd*, *F. E. Andrews*, *F. G. Wright*, *C. C. P. Rausch*, *H. G. Herbel*, *C. Frankenberger*, and *H. A. Scandrett* for defendants. March 18, 1915. Reparation to be awarded on presentation of proper proof.

6582. **AMERICAN FORK & HOE CO. v. O., B. & Q. R. R. CO. ET AL.** Rates on agricultural implements from Fort Madison, Iowa, to Fort Worth, Tex., not found unreasonable. *G. M. Stephen* for complainants. *G. H. Crosby* for defendants. March 22, 1915. Complaint dismissed.

6583. **CHATTANOOGA SEWER PIPE & FIRE BRICK CO. v. SOUTHERN RY. CO. ET AL.** Unreasonable rates on sewer pipe from Chattanooga, Tenn., to Lakeland, Fla. *B. R. Shepherd* for complainant. *M. Carter Hall* for defendants. March 18, 1915. Reparation to be awarded on presentation of proper proof.

6593. **STEVENS GROCER CO. ET AL. v. ST. L., I. M. & S. RY. CO. ET AL.** Rates on coal from Memphis, Tenn., to points in Arkansas not found unreasonable. *G. M.*

Stephen and *S. J. Bolton* for complainants. *H. G. Herbel*, *F. G. Wright*, and *W. F. Dickinson* for defendants. March 18, 1915. Complaint dismissed.

6597. COBB COUNTY CHEMICAL MINING Co. v. N. C. & St. L. Ry. ET AL. Rates on graphite ore Vinings, Ga., to Marion, S. C., not found unreasonable. *G. C. Thompson* for complainant. *C. J. Rizey, jr.*, for defendants. March 18, 1915. Complaint dismissed.

6598. BAADER v. L. & N. R. R. Co. (Fourth section application 1952.) Rates on beer from Cincinnati, Ohio, to Cullman, Ala., and on beer kegs from Cullman to Cincinnati not found unreasonable. Fourth section application denied. *E. Ahlrichs* for complainant. *W. Burger* and *J. M. Dewberry* for defendant. March 18, 1915. Reparation denied.

6609. GWYNN ET AL. v. C., B. & Q. R. R. Co. Unreasonable rates on corn from Norwich and Yorktown, Iowa, to points in Missouri. *E. R. Ferguson* for complainants. *H. H. Holcomb* for defendant. March 22, 1915. Reparation to be awarded on presentation of proper proof.

6619. ARIZONA LUMBER & TIMBER Co. v. A., T. & S. F. Ry. Co. ET AL. Unreasonable rates on box shooks from Flagstaff, Ariz., to Bisbee, Ariz. *G. T. Wall* for complainant. *E. W. Camp* for defendants. March 22, 1915. Reparation for \$78.88.

6635. PITTSBURG & BUFFALO Co. v. H. V. Ry. Co. Demurrage rules applied on coal at Toledo, Ohio, not found unreasonable. *Lang, Cassidy & Copeland* for complainant. *Hoyt, Dustin, Kelley, McKeehan & Andrews* for defendant. March 22, 1915. Complaint dismissed.

6637. GUND BREWING Co. v. O. & N. W. Ry. Co. ET AL. Rates on beer from La Crosse, Wis., to points in Minnesota, and on empties in return direction, not found unreasonable. *G. M. Stephen* and *S. J. Bolton* for complainant. *C. C. Wright*, *R. B. Scott*, *O. W. Dynes*, and *J. N. Davis* for defendants. March 18, 1915. Complaint dismissed.

7239. NARDI'S SONS v. PA. R. R. Co. ET AL. Rates on strawberries from Starke, Fla., to Williamsport, Pa., not found unreasonable. *A. R. Jackson* and *M. C. Rhone* for complainant. *W. A. Spangle* and *H. W. Bikel* for defendants. March 18, 1915. Complaint dismissed.

6639. GAMBLE ROBINSON Co. ET AL. v. C. G. W. R. R. Co. ET AL. Unreasonable rates on apples and pears from points in Missouri to Minneapolis, Minn. *L. A. Knudsen* for complainants. *J. G. Morrison* and *C. Giessow* for defendants. March 22, 1915. Reparation for \$82.05.

6658. VIRGINIA-CAROLINA CHEMICAL Co. v. A. C. L. R. R. Co. Unreasonable rates on sulphuric acid from Charleston, S. C., to Savannah, Ga. *H. W. B. Glover* for complainant. *R. W. Moore* and *C. D. Drayton* for defendant. March 18, 1915. Reparation to be awarded on presentation of proper proof.

6763. ANTHONY v. L. V. R. R. Co. ET AL. Unreasonable rates on potatoes from points in Pennsylvania to New York, N. Y. *W. H. Anthony* for complainant. *C. T. Wolf* for defendants. March 18, 1915. Reparation for \$105.98.

7012. HAMPTON GROCERY Co. ET AL. v. So. Ry. Co. ET AL. 7012 (Sub-No. 1). GILBERT GROCERY Co. v. SAME. Rates on canned blackberries from points in North Carolina to points in West Virginia, Kentucky, and Ohio not found unreasonable. *W. P. Tingley* and *J. T. Crutchfield* for complainants. *C. B. Northrop* and *A. M. Bull* for defendants. March 22, 1915. Complaints dismissed.

7365. BUFFALO SPECIALTY Co. v. WABASH R. R. Co. ET AL. Rates on liquid cement from Buffalo, N. Y., to points in California not found unreasonable. *F. E. Judson* for complainant. *R. C. Fyfe*, *J. T. Bowe*, and *J. J. Mossman* for defendants. March 18, 1915. Complaint dismissed.

7386. NICHOLS & COX LUMBER Co. v. G. R. & I. Ry. Co. ET AL. Unreasonable rates on lumber from Trout Creek, Mich., to Akron, Ohio. *H. L. Foote* for complainant. *J. H. Campbell* for defendants. March 18, 1915. Reparation for \$5.84.

718 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

7393. NAT'L. WHOLESALE LBR. DEALERS' ASSO. for RICE & LOCKWOOD LUMBER Co. v. So. Ry. Co. ET AL. Unreasonable rates on lumber from Juliette, Ga., to Hackensack, N. J. *W. S. Phippen* for complainant. No appearance for defendants. March 18, 1915. Reparation for \$17.13.

7429. KERRIHARD Co. v. So. Ry. Co. ET AL. (Portion of fourth section application No. 1548.) Reparation denied on two shipments of pig iron from Florence, Ala., to Red Oak, Iowa. Fourth section application denied. *F. W. Knoche* for complainant. *L. C. Mahoney* for defendants. March 18, 1915. Complaint dismissed.

6668. THACHER MEDICINE Co. v. C., N. O. & T. P. Ry. Co. ET AL. Rates on medicated sirup from Cincinnati, Ohio, to Chattanooga, Tenn., not found unreasonable. *Finlay, Campbell & Coffey* for complainant. *R. W. Moore* and *M. C. Hall* for defendants. March 22, 1915. Complaint dismissed.

6682. CHESNUTT LUMBER Co. v. N. O. & N. E. R. R. Co. ET AL. Demurrage charges on lumber at Carthage, Tenn., not found unlawful. *R. N. Chesnutt, jr.*, for complainant. *M. C. Hall* for defendants. March 22, 1915. Complaint dismissed.

6848. DUCKWORTH v. I. C. R. R. Co. ET AL. Passenger fare for passage over bridge at Dubuque, Iowa, not found unreasonable. *T. O. Duckworth* for complainant. *A. P. Humburg, P. S. Eustis*, and *F. H. Towner* for defendants. April 2, 1915. Complaint dismissed.

4676. BRODERICK & BASCOM ROPE Co. v. C., R. I. & P. Ry. Co. ET AL. Unreasonable rates on wire rope from St. Louis, Mo., to Oil City, La. *O. M. Rogers* for complainant. *W. T. Hughes, S. W. Moore*, and *J. M. Souby* for defendants. March 18, 1915. Fourth section application denied. Reparation for \$23.87.

6584. MARX & SONS v. L. & N. R. R. Co. ET AL. (Fourth section application No. 1952.) Unreasonable rates on copper from Birmingham, Ala., to Bridgeport, Conn. Fourth section application denied. *G. M. Stephen* and *S. J. Bolton* for complainants. *E. D. Mohr* for defendants. March 18, 1915. Reparation for \$45.12.

7390 and 7390 (Sub-No. 1). INTERNATIONAL SALT Co. v. L. V. R. R. Co. ET AL. SAME v. SAME. (Portions of fourth section applications Nos. 1547, 1561, and 1780.) Unreasonable rates on salt from Ludlowville, N. Y., to points in Virginia and North Carolina. Fourth section applications denied. *W. T. Chisholm* for complainant. *T. C. Beck, B. R. Boggs, F. L. Ballard*, and *R. W. Moore* for defendants. March 18, 1915. Reparation to be awarded on presentation of proper proof.

7064. KOSHKONONG-BRANDSVILLE FRUIT SHIPPERS ASS'N. v. St. L. & SAN FRANCISCO R. R. Co. ET AL. Charges on peaches from points in Missouri to Pittsburgh, Pa., were at the tariff rate. *J. P. Duffy* for complainant. *Thomas Bond* and *C. B. Sudborough* for defendants. March 22, 1915. Complaint dismissed.

6740. TIMPSON BROKERAGE Co. v. A. E. R. R. Co. ET AL. Rates on hay from Thatcher, Ariz., to San Benito, Tex., not found unreasonable. *S. C. Timpson* for complainant. *C. H. McNair, J. A. Brown*, and *J. R. Christian* for defendants. March 22, 1915. Complaint dismissed.

5476. DAVIS v. St. L., I. M. & S. Ry. Co. ET AL. 5740. SAME v. C., R. I. & P. Ry. Co. ET AL. (Part of fourth section application No. 4218.) Unreasonable rates on cottonseed meal from points in Arkansas to points in Louisiana. Fourth section application denied. *R. S. Malone* for complainant. *M. L. Clardy, H. G. Herbel, F. G. Wright, J. P. Blair, J. G. Wilson*, and *J. E. Johansen* for defendants. March 22, 1915. Reparation for \$242.

5493. DUNBAR-HANSEN Co. v. So. PAC. Co. ET AL. Rates on potatoes from Wabuska, Nev., to points in Oklahoma and Texas not found unreasonable. *J. O. Bracken* for complainant. *G. D. Squires* and *E. W. Camp* for defendants. April 1, 1915. Complaint dismissed.

6718. OAKLAND MOTOR CAR Co. v. G. T. Ry. Co. ET AL. Rates charged on automobiles from Pontiac, Mich., to Whitefield, N. H., and New York, N. Y., were higher

than those lawfully in effect. *J. B. Daish* for complainant. *W. H. Spicer* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6727. *ZENITH MILLING Co. v. O. & A. R. R. Co.* 6727 (Sub-No. 1). *SOUTHWESTERN MILLING Co. ET AL. v. MO. PAC. RY. Co.* Refusal to absorb switching charges on grain and grain products at Kansas City, Mo., found unduly prejudicial. *J. E. Johnston* for complainants. *C. M. Miller* for defendants. March 22, 1915. Reparation to be awarded on presentation of proper proof.

6739. *SWIFT & Co. v. MO. PAC. RY. Co. ET AL.* 6739 (Sub-No. 1). *SAME v. ST. L. & S. F. R. R. Co. ET AL.* Unreasonable rates on refrigerating ice from points in Kansas, Missouri, and Texas to points in Mexico. *A. H. Veeder, Henry Veeder, Maurice Weigle,* and *F. L. Horton* for complainant. *H. G. Herbel* and *F. G. Wright* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6751. *ATHENS LUMBER Co. v. L. & N. W. R. R. Co. ET AL.* Rates on logging cars from Athens, La., to Cedar, Tex., not found unreasonable. *F. H. Sullivan* for complainants. *S. S. Seene* and *J. R. Christian* for defendants. April 1, 1915. Complaint dismissed.

6768. *CHATTANOOGA BREWING Co. v. L. & N. R. R. Co. ET AL.* Misrouting empty beer bottles shipped from Tellico Plains, Tenn., to Chattanooga, Tenn. *J. F. Hartley* for complainant. *M. C. Hall* for defendants. April 1, 1915. Reparation for \$28.10.

6772. *PERRY & Co. v. ARIZONA E. R. R. Co. ET AL.* Rates on mining candles from Helena, Mont., to points in Arizona and New Mexico not found unreasonable. *O. W. Tong* for complainant. *Veazey & Veazey, T. J. Norton, F. E. Andrews, E. M. Hall,* and *Hawkins & Franklin* for defendants. April 1, 1915. Complaint dismissed.

6773. *MILLER & Co. v. O. & N. W. RY. Co. ET AL.* Demurrage on potatoes at Arpin, Wis., not found unlawful. *J. E. Robinson* for complainant. *R. H. Widdicombe* and *A. P. Humburg* for defendants. April 1, 1915. Complaint dismissed.

6779. *INDIANA TIE Co. v. I. O. R. R. Co.* Rates on crossties from Evansville, Ind., to Olney, Ill., not found unreasonable. *R. R. Williams* for complainant. *R. V. Fletcher* for defendant. April 1, 1915. Complaint dismissed.

6784. *CHAPMAN & DEWEY LUMBER Co. v. ST. L. & S. F. R. R. Co. ET AL.* Unreasonable rates on lumber from Shaw, Ark., to Marked Tree, Ark. *W. S. Gilbert* for complainant. *Thomas Bond* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6791. *HART BROS. v. P. M. R. R. Co. ET AL.* Unlawful charges for inspection at Saginaw, Mich., and reconsignment thence. *M. J. Hart* for complainant. *J. C. Bills* for defendants. April 1, 1915. Reparation for \$12.57.

6831. *POWELL GRAIN Co. v. ST. L., I. M. & S. RY. Co. ET AL.* Unlawful elevation charges on corn at Westwego, La. *C. Rippin* for complainant. *H. G. Herbel* and *Frank Koch* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6856. *HERSHEY v. N. O. RY. Co. ET AL.* Unjustly discriminatory transit arrangements on grain at York, Pa. *K. W. Alland* and *David Hershey* for complainant. *F. L. Ballard* for defendants. April 3, 1915. Reparation for \$521.98.

6880. *CUMBERLAND TELEPHONE & TELEGRAPH Co. v. I. O. R. R. Co. ET AL.* Rates on poles from Minnesota points to Ferriday, La., not found unreasonable. *S. B. Naff* for complainants. *C. J. Rixey, jr.,* for defendants. April 1, 1915. Complaint dismissed.

6901. *NAVASSA GUANO Co. v. O., M. & ST. P. RY. Co. ET AL.* Claim on dried blood from Milwaukee, Wis., to Wilmington, N. O., barred by period of limitation. *H. W. B. Glover* for complainant. *F. W. Gwathmey* for defendants. April 1, 1915. Complaint dismissed.

7130. **ACME CEMENT PLASTER Co. v. G. R. & I. Ry. Co. ET AL.** Minimum weight on wall plaster from Jeffersonville, Ind., to Bowling Green, Ky., not found unreasonable. *M. N. Sale* for complainant. *E. D. Mohr* and *W. J. Kelley* for defendants. March 22, 1915. Complaint dismissed.

7319. **OLD VINCENNES DISTILLERY Co. v. O., T. H. & S. E. Ry. Co. ET AL.** Alleged misrouting of liquors from Vincennes, Ind., to Cleveland, Ohio, not sustained. *I. Born* and *A. B. Cronk* for complainant. *S. O. Pickens* for defendants. March 22, 1915. Complaint dismissed.

7398. **NATIONAL WHOLESALE LUMBER DEALERS' ASSO. v. A. C. L. R. R. Co. ET AL.** Unreasonable rates on lumber from Burgaw, N. C., to Centerville, Md. *W. S. Phippen* for complainant. *G. H. Cobb* for defendants. April 1, 1915. Reparation for \$11.24.

7406. **CINCINNATI GRAIN Co. v. L. & N. R. R. Co.** (Fourth section application No. 1952.) Unreasonable rates on mill feed from Cincinnati, Ohio, to Cynthiana, Ky. Fourth section application denied. *G. M. Freer* for complainant. *B. Arnold* for defendants. April 1, 1915. Reparation for \$12.

7440. **MILLER & SONS v. C. & E. I. R. R. Co. ET AL.** (Portion of fourth section application No. 2060). Reparation on coal from Johnston City, Ill., to West Union, Iowa, denied. Fourth section application denied. *F. W. Knoche* for complainant. *G. H. Kummer* for defendants. March 22, 1915. Complaint dismissed.

6035. **MANSFIELD HARDWOOD LUMBER Co. v. K. C. So. Ry. Co.** Rates on logs from Mansfield, La., to interstate points not found unreasonable. *E. Bentley* for complainant. *S. W. Moore* and *J. M. Souby* for defendant, April 12, 1915. Complaint dismissed.

6530. **MOUND CITY ROOFING TILE Co. v. M. P. Ry. Co. ET AL.** Unreasonable rates on roofing tile from St. Louis, Mo., to Mize, Miss. *A. L. Smith* for complainant. *F. G. Wright* for defendants. April 12, 1915. Reparation for \$77.42.

6716 and 6716 (Sub. No. 1). **HULL Co. v. A., T. & S. F. Ry. Co. ET AL.** **SAME v. M. P. Ry. Co. ET AL.** Unreasonable rates on cement from Independence, Kans., to points in Nebraska. *H. G. Denison* and *E. J. McVann* for complainant. *H. A. Scandrett* for defendants. April 12, 1915. Reparation for \$92.62.

6749. **CRUIKSHANK & ROBINSON v. PA. R. R. Co. ET AL.** Rates on hay from points in Canada to Norfolk, Va., not in excess of tariff. *H. G. Binns* for complainant. *F. L. Ballard*, *W. D. Miner*, and *L. H. Kentfield* for defendants. April 12, 1915. Complaint dismissed.

6970. **WIER & JORDAN v. So. PAC. Co. ET AL.** Rates on creosote from Galveston, Tex., to San Pedro, Cal., not found unreasonable. *O. T. Helpling* for complainants. *G. D. Squires*, *E. W. Camp*, and *G. H. Baker* for defendants. April 12, 1915. Complaint dismissed.

6824. **RADFORD-PORTSMOUTH VENEER Co. v. N. & W. Ry. Co. ET AL.** (Fourth section application No. 1562.) Unreasonable rates on thin lumber and veneering from East Radford, Va., to interstate points. Fourth section application denied. Rates on veneering and lumber from East Radford to points in Illinois and Wisconsin not found unreasonable. *M. M. Caskie* for complainant. *F. W. Gwathmey* for defendants. April 12, 1915. Reparation to be awarded on presentation of proper proof.

7133. **PRODUCERS FRUIT Co. v. So. PAC. Co. ET AL.** (Fourth section application No. 711.) Unreasonable rates on fruits from Dinuba and Kingsburg, Cal., to Seattle, Wash. Fourth section application denied. *H. W. Adams* and *J. A. Montgomery* for complainant. *C. W. Durbrow* for defendants. April 12, 1915. Reparation for \$77.99.

7359. **DEWEY BROS. Co. v. B. & O. S. W. R. R. Co. ET AL.** Rates on grain from Ohio, Illinois, and Missouri to interstate points not found unreasonable. *O. P. Gothlin* for complainants. *O. S. Lewis* and *E. Barton* for defendants. April 3, 1915. Complaint dismissed.

7368. **CHICAGO LUMBER & COAL Co. v. M. P. Ry. Co.** No overcharge found on shipments of roofing paper from Chicago Heights and East St. Louis, Ill., to Concordia, Kans. *F. H. Sullivan* and *G. Reeves* for complainant. *H. G. Herbel* and *F. G. Wright* for defendant. April 12, 1915. Complaint dismissed.

5564. **ATHA TOOL Co. v. N., C. & St. L. Ry. ET AL.** (Fourth section application No. 458.) Relief granted from the fourth section on lumber from points on the N., O. & St. L. Ry., to Newark, N. J. *H. G. Atha* for complainant. *R. W. Moore* and *M. P. Callaway* for defendants. April 3, 1915. No reparation.

6813. **HYNES ELEVATOR Co. ET AL. v. C., M. & St. P. Ry. Co. ET AL.** Unreasonable rates on corn from points in Iowa and South Dakota to Kansas City, Mo. *E. P. Smith* for complainants. *J. G. Love*, *H. H. Holcomb*, and *H. G. Powell* for defendants. April 12, 1915. Reparation to be awarded on presentation of proper proof.

6870. **BELOIT IRON WORKS v. C., M. & St. P. Ry. Co. ET AL.** Carload basis improperly applied on iron rolls from Beloit, Wis., to Passaic, N. J. *G. M. Stephen* for complainant. *O. W. Dynes*, *C. A. Lahey*, *D. P. Connell*, and *Nathaniel Duke* for defendants. April 12, 1915. Reparation for \$34.85.

6897. **NATIONAL WASHBOARD Co. v. C., B. & Q. R. R. Co. ET AL.** Unreasonable rates on zinc from La Salle, Ill., to Saginaw, Mich. *H. P. Knight* for complainant. *G. H. Crosby*, *A. P. Humburg*, and *R. G. Brown* for defendants. April 12, 1915. Reparation for \$264.05.

6911. **RAYNER & Co. v. A. C. L. R. R. Co. ET AL.** Unreasonable rates on lumber from Wilmington, N. C., to Stewartstown, Pa. *James P. Bakey* for complainants. April 12, 1915. Reparation for \$3.83.

6920. **WEAKLEY & WORMAN Co. v. C., H. & D. Ry. Co.** Demurrage charges on canned fruit at Dayton, Ohio, not found unlawful. *J. B. Collidge* for complainant. *C. Phares* for defendant. April 12, 1915. Complaint dismissed.

6926. **GREAT WESTERN SMELTING & REFINING Co. v. A., T. & S. F. Ry. Co. ET AL.** Rates on brass ingots from San Francisco, Cal., to St. Louis, Mo., not found unreasonable. *J. D. Gray* for complainant. *J. L. Coleman* for defendants. April 12, 1915. Complaint dismissed.

6929. **JORDAN v. LA. Ry. & NAV. Co. ET AL.** Unreasonable rates on potatoes from Baton Rouge, La., to Birmingham, Ala. *W. M. Barrow* for complainant. *E. C. D. Marshall* for defendants. April 12, 1915. Reparation for \$38.04.

6933. **BIRMINGHAM ET AL. v. C., I. & S. R. R. Co. ET AL.** Unreasonable rates on wagons from South Bend, Ind., to Cairo, Ill. *G. M. Stephen* for complainants. *M. P. Callaway* and *D. P. Connell* for defendants. April 12, 1915. Reparation for \$23.35.

6948. **ZELNICKER SUPPLY Co. v. C., R. I. & P. Ry. Co. ET AL.** Unreasonable rates on car trucks from Howe, Okla., to Plainview, Ark. *J. D. Fiddler* for complainant. No appearance for defendants. April 12, 1915. Reparation for \$32.21.

6958. **CHAMBERS v. C. G. W. R. R. Co. ET AL.** Error in issuance of passenger ticket for transportation from Omaha, Nebr., to Portland, Oreg. *C. M. Orlas* for complainant. No appearance for defendants. April 12, 1915. Reparation for \$3.25.

6975. **DAY LUMBER Co. v. N. P. Ry. Co. ET AL.** Unreasonable rates on lumber and shingles from Big Lake, Wash., to Wayne, Nebr. *S. J. Wettrick* for complainant. *H. E. Still* for defendants. April 12, 1915. Reparation for \$67.20.

7038. **BARBARO & Co. v. I. C. R. R. Co. ET AL.** Rates on rutabagas from Cumberland, Wis., to Memphis, Tenn., not found unreasonable. *T. R. Pope* for complainant. *Joseph Hattendorf* for defendants. April 12, 1915. Complaint dismissed.

7225 and 7226. **D. B. ZIMMERMAN v. G. N. Ry. Co. ET AL. SAME v. C., R. I. & G. Ry. Co. ET AL.** Reparation on basis of rates dependent upon number of cars in shipments of cattle from Hicks, Tex., to Gilman and Galbraith, Mont., denied. *J. C. Jeffery* for complainant. *L. C. Mahoney* and *F. K. Crosby* for defendants. April 3, 1915. Complaint dismissed.

722 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

6540 and 6540 (Sub-Nos. 1-4). *W. J. McDIARMID Co. v. PA. R. R. Co. BUTTERS LUMBER Co. v. A. C. L. R. R. Co. MULLINS LUMBER Co. v. So. Ry. Co. PHOSPHATE MINING Co. v. S. A. L. Ry. JOHN T. DIXON LUMBER Co. v. P., B. & W. R. R. Co.* Reparation on shipments of lumber and other articles from Dublin, N. O., and other points to various interstate points disallowed. *H. E. Hanes* and *M. M. Casbie* for complainants. *F. D. McKenny, W. C. Carpenter, and M. P. Callaway* for defendants. April 1, 1915. Complaints dismissed.

6771. *UNITED STATES GYPSUM Co. v. C. & S. Ry. Co. ET AL.* Unreasonable rates on wall plaster from Rapid City, S. Dak., to Wheatland, Wyo. *E. V. Wilson* for complainant. *R. B. Scott* for defendants. April 1, 1915. Reparation for \$98.

6805. *UTAH JUNK Co. v. C., P. & St. L. R. R. Co. ET AL.* Rates on iron and steel articles from East St. Louis, Ill., to Midvale, Utah, not found unreasonable. *S. W. Stewart, B. J. Stewart, and Daniel Alexander* for complainant. *E. N. Clark and J. G. McMurry* for defendants. April 1, 1915. Complaint dismissed.

7150. *BERKEY & GAY FURNITURE Co. v. M. C. R. R. Co. ET AL.* Rates on furniture from Grand Rapids, Mich., to Tacoma, Wash., not found unreasonable. *E. L. Ewing* for complainant. *D. P. Connell, J. H. Campbell, and W. J. Kelly* for defendants. March 22, 1915. Complaint dismissed.

6568. *TOPEKA PACKING Co. v. A., T. & S. F. Ry. Co. ET AL.* Unduly prejudicial rates on poultry and eggs from Kansas points to South Topeka and North Topeka, Kans. *H. D. Driscoll* for complainant. *T. J. Norton, A. A. Hurd, and Harlow Hurley* for defendants. April 3, 1915. Reparation to be awarded on presentation of proper proof.

6654. *SIFRITT v. P. M. R. R. Co. ET AL.* Rates on potatoes from Pentwater, Mich., to Springfield, Ohio, not found unreasonable. *F. L. Carhart* for complainant. *J. W. Redmond and H. Q. Wasson* for defendants. April 3, 1915. Complaint dismissed.

6726. *HULL Co. v. M. P. Ry. Co. ET AL.* Rates on brick from Council Bluffs, Iowa, to Manawa Switch, Iowa, not found unreasonable. *E. J. McVann* for complainant. *R. B. Scott and J. L. Root* for defendants. April 3, 1915. Complaint dismissed.

6743. *SWIFT & Co. v. PA. R. R. Co. ET AL.* Rates on imported kainit from Baltimore, Md., to Seafield, Ind., not unjustly discriminatory. *Maurice Weigle and F. L. Horton* for complainant. *J. Stillwell* for defendants. April 3, 1915. Complaint dismissed.

6761. *CULLMAN COMMERCIAL CLUB v. L. & N. R. R. Co.* Rates on sugar from New Orleans, La., to Cullman, Ala., not found unreasonable. *E. Ahlrichs* for complainant. *W. Burger and J. M. Dewberry* for defendant. April 3, 1915. Complaint dismissed.

6863. *PATENT CEREALS Co. v. LEHIGH VALLEY R. R. Co.* Refusal to absorb switching charges on grain at Geneva, N. Y., not unlawful. *C. Conrads and A. B. Hayes* for complainant. *S. C. Pratt* for defendant. April 3, 1915. Complaint dismissed.

6864. *CYPRESS LUMBER Co. v. A. N. R. R. Co. ET AL.* Excessive weight and unlawful demurrage charges on lumber from Apalachicola, Fla., to Darlington, R. I. *W. S. Phippen* for complainant. *M. G. Gonterman* for defendants. April 3, 1915. Reparation for \$26.36.

6865. *MORSE LUMBER Co. v. L. & N. R. R. Co. ET AL.* Unreasonable rates on lumber from Sanford, Ala., to Willimantic, Conn. *W. S. Phippen* for complainant. *E. D. Mohr* for defendants. April 3, 1915. Reparation for \$35.08.

6866. *COLUMBIA, Ry., GAS & ELECTRIC Co. v. So. Ry. Co. ET AL.* Rates on gas oil from Jacksonville, Fla., to Columbia, S. C., not found unreasonable. *Elliott & Herbert* for complainant. *R. W. Moore and F. W. Gwathmey* for defendants. April 3, 1915. Complaint dismissed.

6915 and 6915 (Sub-Nos. 1, 2, and 3). *LARZELERE Co. v. A., T. & S. F. Ry. Co. PLATT PRODUCE Co. v. SAME. NIMS v. SAME. WEYL ZUCKERMAN & Co. v. SAME.* Failure to absorb storage charges on vegetables at Stockton, Cal., did not result in

damage. *W. R. Larzelere, P. E. Platt, F. B. Nims, and H. G. Zuckerman* for complainants. *W. G. Barnwell* for defendants. April 12, 1915. Complaints dismissed.

6946. *LUSBY v. SO. PAC. CO. ET AL.* (20 other cases.) Carriers entitled to charge for the weight of the dunnage used with automobiles shipped from eastern points to points in California. *O. T. Helpling* for complainants. *G. D. Squires, E. W. Camp, and A. S. Halstead* for defendants. April 12, 1915. Complaints dismissed.

6735. *HARMON & CO. v. OREG.-WASH. R. R. & NAV. CO. ET AL.* Rates on chair stock from Elizabethton, Tenn., to Tacoma, Wash., not found unreasonable. *J. W. McCune* for complainant. *A. W. Hawkins and R. W. Moore* for defendants. April 1, 1915. Complaint dismissed.

7154. *DU PONT DE NEMOURS POWDER CO. v. C. & W. RY. CO. ET AL.* Rates on explosives from Louviers and Augusta, Colo., to Sunrise, Wyo., not found unreasonable. *J. P. Laffey and V. S. Thomas* for complainant. *R. B. Scott and G. H. Crosby* for defendants. March 22, 1915. Complaint dismissed.

6868. *PARLIN & ORENDORFF CO. v. C., R. I. & P. RY. CO.* (Fourth section application No. 1851.) Unreasonable rates on potato diggers from Prairie City, Iowa, to Minneapolis, Minn. Fourth section application denied. *W. M. Cave* for complainant. *W. F. Dickinson* for defendant. April 12, 1915. Reparation to be awarded on presentation of proper proof.

6907. *GOBLE v. D. & R. G. R. R. CO.* Unreasonable rates on zinc ore and concentrates from Silverton, Colo., to Minnequa, Colo. *C. W. Durbin* for complainant. *E. N. Clark* for defendant. April 12, 1915. Reparation for \$910.25.

7228. *FULKERSON v. C., R. I. & P. RY. CO. ET AL.* (Fourth section application No. 3419.) Unreasonable rates on sand from Kansas City, Mo., and Kansas City, Kans., to Perrin, Mo. Fourth section application denied. *Lyons & Smith and P. E. Bradley* for complainant. *W. F. Dickinson and J. G. Trimble* for defendants. April 12, 1915. Reparation to be awarded on presentation of proper proof.

7340. *STANDARD MILLING CO. v. I. & G. N. RY. CO. ET AL.* Unreasonable rates on rice from Fenton, La., to Houston, Tex. *F. A. Farda* for complainant. *L. M. Hogsett* for defendants. April 12, 1915. Reparation for \$1,272.80.

6871. *VIRGINIA-CAROLINA CHEMICAL CO. v. I. C. R. R. CO. ET AL.* Unreasonable import rates on kainit, manure salts, and potashes from New Orleans, La., to Cincinnati, Ohio. *H. W. B. Glover* for complainant. *F. W. Gwathmey* for defendants. April 3, 1915. Reparation for \$1,067.55.

6927. *PITTMANS & DEAN CO. v. G. T. RY. CO. ET AL.* Demurrage charges on coal at Detroit, Mich., were assessed in accordance with tariff. *Beaumont, Smith & Harris* for complainant. *L. C. Stanley* for defendants. April 3, 1915. Complaint dismissed.

6949. *INGHAM LUMBER CO. v. C., R. I. & P. RY. CO. ET AL.* Claim as to reparation for shipments of lumber from Danville, La., to Bartlesville, Okla., barred by statute of limitations. *A. D. McCollum* for complainant. *W. F. Dickinson, R. G. Merrick, and G. F. Thomas* for defendants. April 3, 1915. Complaint dismissed.

6957. *SLOAN v. SO. RY. CO. ET AL.* Claim for reparation on coal from La Follette, Jellico, and Newcomb, Tenn., to Anderson, S. C., denied. *D. A. Henning* for complainant. *A. M. Bull* for defendants. April 3, 1915. Complaint dismissed.

6959. *TOOTLE-CAMPBELL DRY GOODS CO. v. MO. PAC. RY. CO. ET AL.* (2 other cases.) Unreasonable class rates from southeastern and Carolina territories to St. Joseph, Mo. *H. G. Krake* for complainants. *H. G. Herbel and F. G. Wright* for defendants. April 3, 1915. Reparation to be awarded on presentation of proper proof.

6978. *AMERICAN LINSEED CO. v. C. & N. W. RY. CO. ET AL.* Unlawful rates on flax from Chugwater, Wyo., to Sioux City, Iowa. *G. F. Weid* for complainant. No appearance for defendants. April 3, 1915. Reparation for \$70.53.

7014. *WATERMAN LUMBER & SUPPLY CO. v. ST. L. & S. F. R. R. CO. ET AL.* Rates on coal from points in Arkansas to points in Texas not found unreasonable. *Kirk-*

patrick, McCollum & Kirkpatrick for complainant. *C. S. Burg, Thomas Bond, J. M. Souby, A. A. Hurd, H. G. Herbel, and F. G. Wright* for defendants. April 12, 1915. Complaint dismissed.

7025. *BROWN MERCANTILE Co. v. M. & P. R. R. Co. ET AL.* (7 other cases.) Rates on canned tomatoes from points in Maryland, Virginia, and Pennsylvania to points in Colorado not found unreasonable. *M. A. Dietler and H. A. Marr* for complainants. *A. S. Brooks, F. D. McKenney, W. C. Carpenter, F. H. Wood, and E. E. Whitted* for defendants. April 3, 1915. Complaints dismissed.

7053. *RANKIN & Co. v. M. & St. L. R. R. Co. ET AL.* Unreasonable rates on middlings from Arlington, Minn., to Honey Creek, Wis. *G. A. Schroeder* for complainants. *E. G. Clark* for defendants. April 3, 1915. Reparation for \$18.

7193. *HOLLAND BLOW STAVE Co. v. I. C. R. R. Co. ET AL.* Rates on barrel staves from Haleyville, Ala., to Decatur, Ala., not found unreasonable. *J. T. Slatter* for complainant. *M. C. Hall* for defendants. April 3, 1915. Complaint dismissed.

6501. *INTERNATIONAL PURCHASING Co. v. St. L. & S. F. R. R. Co. ET AL.* Unreasonable rates on rope from points in Oklahoma to St. Louis, Mo. *L. C. Southard and B. P. Gray* for complainant. *C. S. Burg, Thomas Bond, F. G. Wright, C. C. P. Rausch, and T. J. Norton* for defendants. April 1, 1915. No reparation.

6556. *PUGH MANUFACTURING Co. v. C., R. I. & P. Ry. Co. ET AL.* Rates on potato sorters from Topeka, Kans., to Idaho Falls, Idaho, not found unreasonable. *H. D. Driscoll* for complainant. *J. C. Lacoste, Charles Frankenberger, and C. A. Mogaw* for defendants. April 1, 1915. Complaint dismissed.

6695. *COLLINS v. T. & G. Ry. Co. ET AL.* Misrouting hickory billets shipped from Chatham, La., to Philadelphia, Pa. *J. B. Collins* for complainant. *F. P. Stubbs, jr.,* for defendants. April 1, 1915. Reparation for \$63.92.

6701. *MOSS TIE Co. v. So. Ry. Co.* Unreasonable rates on crossties from Evansville, Ind., to Chicago, Ill. *D. N. Kirby and H. F. Fisse* for complainant. *F. H. Behring* for defendant. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6703. *McCLINTICK & Co. v. A. A. R. R. Co. ET AL.* Rates on potatoes from Beulah, Mich., to Huntingburg, Ind., not found unreasonable. No appearance for complainant. *G. A. Weller* for defendants. April 12, 1915. Reparation to be awarded on presentation of proper proof.

6760. *CHARLESTON MINING & MFG. Co. v. So. Ry. Co.* Unreasonable minimum weight on phosphate rock from Goodrich, S. C., to Winston-Salem, N. C., and Augusta, Ga. *H. W. B. Glover* for complainant. No appearance for defendant. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6892. *COBB v. N. & W. Ry. Co. ET AL.* Unreasonable rates on firewood from Quail Roost, N. C., to Richmond, Va. *R. P. Reade* for complainant. No appearance for defendants. April 3, 1915. Reparation for \$89.34.

6896. *ROSENBAUM & SON v. C., B. & Q. R. R. Co.* Rates on old wrought-iron pipe and boiler shells from Chicago, Ill., to Albia, Iowa, not improperly applied. *H. E. Valentine* for complainant. *L. C. Mahoney* for defendant. April 1, 1915. Complaint dismissed.

6906. *DARNELL v. Y. & M. V. R. R. Co. ET AL.* Unreasonable rates on lumber from Leland, Miss., to New Orleans, La. *J. H. Townshend* for complainant. *R. V. Fletcher, E. A. Smith, and M. C. Hall* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

6923. *VIRGINIA-CAROLINA CHEMICAL Co. v. L. & N. R. R. Co. ET AL.* Unreasonable rates on imported nitrate of soda from Pensacola, Fla., to Shreveport, La. *H. W. B. Glover* for complainant. No appearance for defendants. April 1, 1915. Reparation for \$837.11.

6954. **ROYSTER GUANO CO. v. S. A. L. RY. ET AL.** Unreasonable rates on phosphate rock from Nichols, Fla., to Macon, Ga. *C. J. Collins* for complainant. *F. W. Gwathmey* for defendants. April 3, 1915. Reparation to be awarded on presentation of proper proof.

7072. **VAUGHAN'S SEED STORE v. C., M. & ST. P. RY. CO.** Unreasonable rates on moss from Mather, Wis., to Chicago, Ill. *C. L. Scutz* for complainant. *R. C. Sanders* for defendant. April 3, 1915. Reparation to be awarded on presentation of proper proof.

7143. **TYLER PRODUCE CO. ET AL. v. I. & G. N. RY. CO. ET AL.** Unreasonable rates on bananas from New Orleans, La., to Tyler, Tex. *L. R. Bryan* for complainants. *J. M. King* and *L. M. Hogsett* for defendants. April 1, 1915. Reparation to be awarded on presentation of proper proof.

7372. **NATIONAL WHOLESALE LUMBER DEALERS ASSO. v. N. S. R. R. CO. ET AL.** Unreasonable rates on lumber from Hertford, N. C., to Goshen, N. Y. *W. S. Phippen* for complainant. *G. H. Cobb* for defendants. April 1, 1915. Reparation for \$22.99.

7426. **KENNEDY & CO., LTD., v. K. & W. V. R. R. CO. ET AL.** Unreasonable rates on lumber from Blakeley, W. Va., to Locust Point, Md. *M. E. P. Christie* for complainant. *T. S. Clark* and *H. Dwire* for defendants. April 1, 1915. Reparation for \$37.40.

5426. **DANIELS & FISHER STORES CO. ET AL. v. C. & S. RY. CO. ET AL.** (Part of fourth section application No. 990.) Unduly prejudicial rates on cotton sheets, pillow cases, and blankets from the Atlantic seaboard to Salt Lake City, Utah. Fourth section application denied. *C. W. Durbin* for complainants. *N. H. Loomis*, *H. A. Scandrett*, *L. T. Wilcox*, *T. M. Stuart*, and *T. R. Woodrow* for defendants. April 1, 1915. No reparation awarded.

6818. **GREER-BEATTY CLAY CO. v. PA. CO. ET AL.** Rates on building blocks from Magnolia, Ohio, to Olean, N. Y., and St. Marys, Pa., not found unreasonable. *G. H. Clark* for complainant. *L. E. Hinkle* for defendants. April 1, 1915. Complaint dismissed.

7163. **HAMMER v. A. C. L. R. R. CO. ET AL.** Unreasonable rates on lumber from Burgaw, N. C., to Havre de Grace, Md. *F. W. Judd* for complainant. *F. L. Ballard* for defendants. April 1, 1915. Reparation for \$8.70.

6445. **FRIEDLAENDER & CO. v. C. OF G. RY. CO. ET AL.** Unreasonable rates on paper stock from Columbus, Ga., to Cincinnati and Lockland, Ohio. *S. A. Spivey* for complainants. *C. J. Rixey, jr.*, for defendants. April 1, 1915. Reparation denied.

6811. **JONES & HURST ET AL. v. A., T. & S. F. RY. CO. ET AL.** (Fourth section applications Nos. 964 and 1862.) Rates on granite and marble from Chicago, Ill., to St. Louis, Mo., not found unreasonable. Fourth section application denied. *I. N. De La Mater* and *D. C. Moffitt* for complainants. *W. A. Miller*, *R. Dunlap*, *F. E. Andrews*, *R. B. Cunningham*, *A. A. Hurd*, *H. G. Herbel*, *F. G. Wright*, *H. A. Scandrett*, *C. Frankenberger*, and *A. S. Brooks* for defendants. April 1, 1915. Complaint dismissed.

I. & S. 535. **GRAIN RATES BETWEEN WINONA, MINN., AND MINNEAPOLIS, MINN.** Proposed increased rates justified. *L. C. Mahoney* and *G. P. Lyman* for respondents. *E. F. Kundrick* and *H. C. Garvin* for protestants. April 26, 1915. No reparation.

5913. **MEEDS LUMBER CO. v. N. O. GT. N. R. R. CO. ET AL.** Unreasonable rates on lumber from Sun, La., to Helena, Ark. *W. N. Webb* for complainant. *G. B. Auburtin*, *F. W. Gwathmey*, and *R. D. Reeves* for defendants. April 26, 1915. Reparation for \$17.25.

6755. **ANHEUSER-BUSCH BREWING ASSO. v. C., R. I. & P. RY. CO. ET AL.** Rates on empty beer packages from Phoenix, Ariz., to St. Louis, Mo., not found unreasonable. *R. Muehlberg* for complainant. *G. D. Hild* and *R. D. Williams* for defendants. April 26, 1915. Complaint dismissed.

726 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

6814. *SMITH & SON v. C. & N. W. Ry. Co.* Unreasonable rates on lumber trimmings from Odanah, Wis., to Clinton, Iowa. *M. D. Smiley* for complainant. *F. W. Ellis* for defendant. April 26, 1915. Reparation to be awarded on presentation of proper proof.

6823. *WATERBURY FELT Co. v. B. & A. R. R. Co. ET AL.* Rates on wool from Boston, Mass., to Skaneateles Falls, N. Y., not found unreasonable. *O. M. Rogers* for complainant. *A. E. Allen* for defendants. April 26, 1915. Complaint dismissed.

6529. *IRELAND & ROLLINGS v. St. L. & S. F. R. R. Co. ET AL.* (Fourth section applications Nos. 703, 799, and 1573.) Rates on furniture from Fort Scott, Kans., to Augusta, Ga., not found unreasonable. Fourth section questions reserved. *R. L. Smith* for complainants. *T. Bond* and *R. W. Moore* for defendants. April 26, 1915. Complaint dismissed.

7247. *LANDERGIN BROS. v. A. E. R. R. Co.* Demurrage charges on cattle at Bylas, Ariz., not found unreasonable. *H. C. Pipkin* for complainant. *H. C. Hallmark* for defendant. April 26, 1915. Complaint dismissed.

7392. *WEIS & LESH MFG. Co. ET AL. v. M. & O. R. R. Co.* Rules as to transit on lumber at Jackson and Trenton, Tenn., not found unreasonable. *J. A. Morgan* for complainants. *W. H. Grumley* for defendant. April 26, 1915. Complaint dismissed.

7464. *DUBUQUE ALTAR MFG. Co. v. C. G. W. R. R. Co. ET AL.* Shipment of altars, kneelers, and statuary, from Dubuque, Iowa, to Larchwood, Iowa, not misrouted. *F. W. Knoche* for complainant. *F. S. Hollands* for defendants. April 26, 1915. Complaint dismissed.

4975. *RETAIL MERCHANTS ASSOCIATION ET AL. v. N. P. Ry. Co.* (3 other cases.) Class and commodity rates from eastern territory to Montana points not found unreasonable. *E. C. Day*, *C. B. Nolan*, and *R. L. Varney* for complainants. *Charles Donnelly*, *J. F. Finerty, jr.*, *R. B. Scott*, *H. A. Scandrett*, *J. G. Wilson*, *D. G. Stivers*, *J. N. Davis*, and *H. C. Barlow* for defendants. April 26, 1915. Complaints dismissed.

6332. *WILKES & Co. v. A. G. S. R. R. Co. ET AL.* Unjustly discriminatory rates on imported blackstrap molasses from Mobile, Ala., to Nashville, Tenn. *T. M. Henderson* for complainant. *E. D. Mohr*, *W. A. Northcutt*, *R. V. Fletcher*, *J. D. De Bow*, and *W. K. Vandiver* for defendants. April 26, 1915. No reparation.

6706. *CAMPBELL Co. v. G. T. W. Ry. Co. ET AL.* Misrouting of fanning mills shipped from Detroit, Mich., to Sacramento, Cal. *R. J. Simmons* for complainant. *J. P. Gay* for defendants. April 26, 1915. Reparation for \$125.88.

7013. *SODEMAN HEAT & POWER Co. v. I. C. R. R. Co. ET AL.* Classification of hot-water heating plant not found unreasonable. *A. L. Smith* for complainant. *R. W. Moore* for defendants. May 3, 1915. Complaint dismissed.

7042. *MASCARI BROS. v. St. L. & S. F. R. R. Co. ET AL.* Unreasonable rates on wine from Pittsburg, Cal., to Memphis, Tenn. *T. R. Pope* for complainants. No appearances for defendants. April 26, 1915. Reparation for \$14.25.

7201. *MIFFLIN HOOD BRICK Co. v. So. Ry. Co.* Unreasonable rates on brick from Greenville, S. C., to Atlanta, Ga. *J. J. Neer* for complainant. *G. K. Caldwell* for defendant. April 26, 1915. Reparation for \$79.80.

7227. *DEWEY BROS. Co. v. B. & O. S. W. R. R. Co. ET AL.* Rates on bran and middlings from Beardstown, Ill., to Ravenswood, W. Va. *L. W. Dewey* for complainant. *O. S. Lewis* for defendants. April 26, 1915. Complaint dismissed.

7240. *SIZER & Co. v. A. C. L. R. R. Co. ET AL.* Unreasonable lighterage charges on lumber in New York harbor. *W. S. Phippen* for complainant. *G. H. Cobb* for defendants. April 26, 1915. Reparation for \$81.42.

7256. *BEEBE & RUNYAN FURNITURE Co. v. UNION PACIFIC R. R. Co. ET AL.* Unreasonable switching charges on furniture at Omaha, Nebr. *R. H. Grenelle* for complainant. *C. Frankenberger* for defendants. April 26, 1915. Reparation for \$42.

7349. **MAPES v. G. N. Ry. Co. ET AL.** (Fourth section application No. 1850.) Unreasonable rates on wool from Harlem, Mont., to Marion, Ohio. Fourth section application denied. *R. B. Coapstick* for complainant. *C. C. Fisher* for intervener. *F. G. Lantz* for defendants. April 26, 1915. No reparation.

6956. **GOLD STAMP MINING Co. v. G. N. Ry. Co.** Unreasonable rates on machinery from Nighthawk, Wash., to Seattle, Wash. *S. J. Wettrick* and *J. H. Frazier* for complainant. *F. G. Dorsety* for defendant. April 26, 1915. Reparation for \$171.30.

6993. **AMERICAN VULCANIZED FIBRE Co. v. B. & O. R. R. Co. ET AL.** Classification of vulcanized fibre not found unreasonable. *R. H. Richards* and *R. C. Jones* for complainant. *F. D. McKenney* and *W. C. Carpenter* for defendants. May 3, 1915. Complaint dismissed.

7003. **BAIRD LUMBER Co. v. A. & St. A. B. Ry. Co. ET AL.** Misrouting lumber shipped from Millville Junction, Fla., to points in Pennsylvania. *W. D. Covington* for complainant. *L. J. Rowell* for defendants. April 26, 1915. Reparation for \$70.62.

7277. **REED FOUNDRY & MACHINE Co. v. G. R. & I. Ry. Co. ET AL.** Unreasonable rates on cultivators from Kalamazoo, Mich., to Campbellton, Fla. *W. L. Fox* for complainant. *W. J. Kelly* and *E. D. Mohr* for defendants. April 26, 1915. Reparation for \$76.83.

7330. **NATIONAL SUPPLY Co. v. L. S. & M. S. Ry. Co. ET AL.** (2 other cases.) Unreasonable rates on bull-wheel cants, arms, and pins from Wagon Works, Ohio, to Electra, Tex., and Lewis, La. *J. F. Ryan* for complainant. *R. D. Williams* for defendants. April 26, 1915. Reparation for \$587.57.

7397. **INDIAN REFINING Co. v. So. Ry. Co.** Penalty storage charges on gasoline at Rome, Ga., found unreasonable. *H. B. Cole* for complainant. *F. W. Gwathmey* for defendant. April 26, 1915. Reparation for \$10.

I. & S. 512. **MINIMUM WEIGHTS ON PACKING-HOUSE PRODUCTS AND FRESH MEATS.** Proposed increase not justified. *J. G. Kerr* for respondents. *Borders, Walter & Burchmore, E. W. Skipworth, W. R. Brown, W. W. Manker,* and *R. O'Hara* for protestants. April 26, 1915. No reparation.

7149. **FITZGERALD Co. v. B., R. & P. Ry. Co.** Demurrage charges on brick and cement at Springville, N. Y., not found unreasonable. *J. J. Hurley* for complainant. *S. M. Havens* for defendant. April 26, 1915. Complaint dismissed.

7064. **TYLER v. PA. R. R. Co. ET AL.** Coal shipped from Hastings, Pa., to Winoski, Vt., not misrouted. *E. Huns* for complainant. *F. L. Ballard* for defendants. April 26, 1915. Complaint dismissed.

7069. **LONE STAR BREWING Co. v. M., K. & T. Ry. Co. ET AL.** Unreasonable rates on wooden bungs from St. Louis, Mo., to San Antonio, Tex. *U. S. Pawkett* for complainant. *J. F. Garvin* for defendants. April 26, 1915. Reparation for \$32.75.

7083. **LEE Co. v. C., R. I. & P. Ry. Co.** Unreasonable rates on incubators and brooders from Omaha, Nebr., to Wichita, Kans. *E. J. McVann* for complainant. *H. L. McReynolds* for defendant. April 26, 1915. Reparation for \$17.16.

7084. **KNIGHT MERCANTILE Co. v. WABASH R. R. Co. ET AL.** Unreasonable rates on motorcycles from Chicago, Ill., to St. Louis, Mo. *A. A. Knight* for complainant. *H. E. Watts* for defendants. April 26, 1915. Reparation to be awarded on presentation of proper proof.

I. & S. 539. **CEMENT RATES.** Proposed increases not justified. *W. S. Saunders* and *T. C. Beck* for respondents. *F. E. Paulson, L. J. Daubeck,* and *W. F. Clark,* for protestant. May 11, 1915. No reparation.

5800. (Sub-No. 1.) **CAMDEN IRON WORKS v. A. C. L. R. R. Co.** Unreasonable terminal charges on pig iron at Norfolk, Va. *R. W. Moore* for defendant. April 30, 1915. Reparation for \$838.

6899 and 6899 (Sub-No. 1). **DIEHL LUMBER Co. v. C., M. & St. P. Ry. Co. ET AL.** **SAME v. C., M. & St. P. Ry. Co.** Unlawful charges on lumber from Springston and 84 I. C. C.

St. Joe, Idaho, to Morristown, S. Dak. *E. J. McVann* for complainant. *J. N. Davis* for defendants. April 30, 1915. Reparation for \$69.44.

6952. CONSOLIDATED FUEL Co. v. C., B. & Q. R. R. Co. Misrouting coal shipped from Clarinda, Iowa, to Tarkio, Mo. *C. E. Abbott* for complainant. *B. Clark* for defendant. April 30, 1915. Reparation for \$25.

7043. SCHLOSS & KAHN v. L. & N. R. R. Co. Unreasonable rates on cotton ties and bagging from Montgomery, Ala., to New Orleans, La. *W. F. Thetford* and *J. M. Strassburger* for complainants. *W. D. Shepard* for defendant. April 26, 1915. Reparation for \$36.

7049. WILLIAMSBURG LUMBER Co. v. G. & S. I. R. R. Co. ET AL. Complaint as to unreasonable rates on lumber from Collins, Miss., to Wilmington, Del., barred by statute of limitations. *H. D. Kellogg* for complainant. *C. D. Drayton* for defendants. April 26, 1915. Complaint dismissed.

7107. POWELL-MYERS LUMBER Co. v. ST. L. S. W. RY. Co. ET AL. Rates on lumber from Saline Siding, Ark., to Tweed, Ontario, in accordance with tariff. *H. J. Aldworth* for complainant. *R. D. Coleman* and *F. E. Webster* for defendants. May 3, 1915. Complaint dismissed.

7181. PENNSYLVANIA SALT MFG. Co. v. PA. R. R. Co. Record insufficient to determine responsibility for detention of cars on which demurrage accrued. *C. W. Bowden* for complainant. *H. W. Bickle* for defendant. April 26, 1915. Complaint dismissed.

7196. PIONEER FRUIT Co. v. SO. PAC. Co. ET AL. Alleged misrouting of pears from Alviso, Cal., to Aberdeen, S. Dak., not sustained. *H. W. Adams* and *J. A. Montgomery* for complainant. *E. H. Lamb* and *C. H. Durbrow* for defendants. April 26, 1915. Complaint dismissed.

7214. WICHITA BUSINESS ASSO. v. M. V. R. R. Co. Unreasonable rates on wood from Fort Smith, Ark., to Wichita, Kans. *M. E. Casto* for complainant. *L. L. Mazey* for defendant. May 3, 1915. Reparation for \$86.71.

7298. REEVES COAL Co. v. A. A. R. R. Co. Demurrage charges on coal at Frankfort, Mich., not found unlawful. *S. B. Houck* for complainant. *L. R. Allison* for defendant. May 3, 1915. Complaint dismissed.

7336. WILLIAMS Co. v. M. C. R. R. Co. ET AL. Rates on lumber from points in Maine to Philadelphia, Pa., not found unreasonable. *M. J. Dukes* for complainant. *C. H. Blatchford* for defendants. May 3, 1915. Complaint dismissed.

6360. GREAT WESTERN OIL REFINING Co. v. M., K. & T. RY. Co. Rates on petroleum from Kansas City, Mo., to Erie, Kans., not found unreasonable. *C. C. Cory* for complainant. *C. L. Lyons* for defendant. April 30, 1915. Reparation for \$8.95 on account of overcharge.

7108. TEXAS UNIT CONSTRUCTION Co. v. N. O., T. & M. R. R. Co. ET AL. (Fourth section application No. 461.) Unreasonable rates on gravel from Anchorage, La., to Galveston, Tex. Fourth section application denied. *Eliot, Chaplin, Blayne & Bedal* for complainant. *C. H. Webb* for defendants. April 1, 1915. Undercharges waived.

5845. NATIONAL LEAGUE OF COMMISSION MERCHANTS v. PA. R. R. Co. Former reparation of drayage charges on peaches from New Jersey City, N. J., to New York, N. Y., affirmed. *R. S. French* for complainant. *F. L. Ballard* for defendant. May 11, 1913. Reparation affirmed.

6412. NEBRASKA BRIDGE SUPPLY & LUMBER Co. v. A. G. S. R. R. Co. ET AL. Unreasonable rates on posts from Chickamauga, Ga., to points in Nebraska, Missouri, Kansas, and Iowa. *E. J. McVann* for complainant. *M. C. Hall* for defendants. May 11, 1915. Reparation to be awarded on presentation of proper proof.

6809. WARNER IRON Co. v. L. & N. R. R. Co. Reconsignment and diversion of coke in transit from Apalachia, Va., to Goodrich, Tenn., at Bowling Green, Ky., and other points, should be allowed. *T. M. Henderson* for complainant. *E. D. Mehr* for defendant. May 11, 1915. Reparation for \$332.04.

6873. **NATIONAL LOCK CO. v. C., M. & G. RY. CO. ET AL.** Prayer for mixed carload rating on hardware from Rockford, Ill., to High Point, N. C., denied. *C. S. Bather* for complainant. *R. W. Moore, M. C. Hall, and F. E. Webster* for defendants. May 11, 1915. Complaint dismissed.

7007. **MARTY & CO. v. C., B. & Q. R. R. CO.** Unreasonable rates on cheese from Alma, Wis., to Chicago, Ill. *O. M. Rogers* for complainant. *G. H. Crosby* for defendant. April 26, 1915. Reparation for \$40.10.

7058. **WOODS LUMBER CO. v. ST. L., I. M. & S. RY. CO. ET AL.** Unreasonable rates on lumber from Memphis, Tenn., to Amesbury, Mass. *J. H. Townshend* for complainant. *F. B. Clark* for defendants. May 11, 1915. Reparation for \$37.06.

7076. **MONROE HARDWARE CO. v. N. Y., N. H. & H. R. R. CO. ET AL.** Unreasonable rates on shells and cartridges from Bridgeport, Conn., to Monroe, La. *J. C. Smith, J. M. Munholland, and W. L. Ethridge* for complainant. *C. C. P. Rausch* for defendants. April 26, 1915. Reparation for \$101.23.

7096. **PALMER & SEMANS LUMBER CO. v. C. & O. RY. CO. ET AL.** Excessive weight on lumber from Raleigh, W. Va., to Youngstown, Ohio. *W. S. Phippen* for complainant. *J. S. Patterson* for defendants. April 26, 1915. Reparation for \$55.19.

7098. **HICE MFG. CO. v. C. & W. C. RY. CO. ET AL.** Rates on table rims from Augusta, Ga., to Johnson City, Tenn., not found unreasonable, but an overcharge was made. *J. W. Hice* for complainant. *M. C. Hall* for defendants. May 11, 1915. Reparation for \$41.16, on account of overcharge.

7111. **PATENT CEREALS CO. v. N. Y. C. & H. R. R. R. CO. ET AL.** Transit charge at Geneva, N. Y., on corn from Buffalo, N. Y., not found unreasonable. *O. M. Rogers* for complainant. *J. M. Sternhagen and E. S. Ballard* for defendants. May 11, 1915. Complaint dismissed.

7192. **DEWEY BROTHERS CO. v. P., C., C. & ST. L. RY. CO. ET AL.** Rates on distillers' dried grain from Cheswick, Pa., to Garrettsville, Ohio, not found unreasonable, but rates on cottonseed meal from Huntsville, Ala., to East Orwell, Ohio, found unlawful. *O. P. Gothlin* for complainant. *A. P. Burgwin* for defendants. April 26, 1915. Reparation for \$8.

7195. **DEWEY BROTHERS CO. v. B. & O. S. W. R. R. CO. ET AL.** (Portion of fourth section application No. 2072.) Unreasonable rates on corn from Cuba, Ohio, to Raymond City, W. Va. Fourth section application denied. *O. P. Gothlin* for complainant. *O. L. Lewis* for defendants. April 26, 1915. Reparation for \$9.23.

7233. **PRICE IRON & STEEL CO. v. N. & W. RY. CO. ET AL.** Unreasonable rates on scrap iron from Chicago, Ill., to Portsmouth, Ohio. *A. M. Price* for complainant. No appearance for defendants. May 11, 1915. Reparation for \$4.55.

7276. **PRODUCERS LUMBER CO. v. N. S. R. R. CO. ET AL.** Unreasonable rates on lumber from Elizabeth City, N. C., to North Wales, Pa. *J. J. Ginnivan* for complainant. *H. W. Bikelé* for defendants. April 26, 1915. Reparation for \$8.36.

7033. **BUCHANAN COAL CO. v. C., R. I. & P. RY. CO.** Demurrage charges on coal at Cedar Rapids, Iowa, not found unreasonable. *G. Buchanan* for complainant. *W. F. Dickinson* for defendants. April 26, 1915. Complaint dismissed.

6263. **BARNARD CO. v. C. & N. W. RY. CO. ET AL.** As the total charges on moss from points in Wisconsin to Chicago, Ill., did not exceed those found reasonable, no reparation allowed. *O. M. Rogers* for complainant. *R. H. Widdicombe* for defendants. May 11, 1915. Complaint dismissed.

6621. **RATH PACKING CO. v. I. C. R. R. CO. ET AL.** (Portion of fourth section application No. 1948.) Rates on packing-house products from Waterloo, Iowa, to Chicago, Ill., not found unreasonable, but the rates via the C. G. W. R. R. found unduly prejudicial; fourth section application granted in part. *J. H. Henderson, D. N. Lewis, and C. A. Heath* for complainant. *A. P. Humburg, W. T. Hughes, and G. B. Winston* for defendants. April 26, 1915. No reparation.

730 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

6857. **LORD & BUSHNELL Co. v. T. & P. Ry. Co. ET AL.** Overcharge because of delay in transmitting order to divert to Curtis Bay, Md., a car of lumber en route from Boleyn, La., to Butler, Pa. *L. J. Behan* for complainant. *F. G. Wright* and *E. M. Davis* for defendants. April 26, 1915. Reparation to be awarded on presentation of proper proof.

6986. **GALLO v. L. V. R. R. Co. ET AL.** Excess baggage charges on trunks from New York, N. Y., to San Francisco, Cal., improperly assessed. *F. Gallo* and *C. Gigliotti* for complainant. *L. T. Wilcox*, *G. W. Vaux*, *R. H. Widdicombe*, and *F. H. Wood* for defendants. April 26, 1915. Reparation for \$245.39.

7028. **ALSHULER Co. v. C. & N. W. Ry. Co. ET AL.** Rates on dresses from Waukegan, Ill., to Pacific coast points not found unreasonable. *C. J. Guthrie* for complainant. *J. L. Coleman*, *C. A. Lahey*, *R. H. Widdicombe*, and *A. F. Cleveland* for defendants. May 11, 1915. Complaint dismissed.

7041. **PENINSULAR PORTLAND CEMENT Co. v. C. N. R. R. Co.** Rates on clay from Bryan, Ohio, to Cement City, Mich., justified. *Beaumont, Smith & Harris* for complainant. *L. J. Hackney* for defendant. May 11, 1915. Complaint dismissed.

7044. **BENJAMIN v. M. C. R. R. Co.** All carriers participating in the rates on gangster rock from points in Pennsylvania to Welland, Ontario, were not parties defendant. *G. Benjamin* for complainant. *D. P. Connell* for defendant. April 26, 1915. Complaint dismissed.

7063. **PACIFIC FRUIT EXCHANGE v. A., T. & S. F. Ry. Co. ET AL.** Unreasonable rates on fruit from points in California to Vancouver, B. C., and Seattle, Wash. *J. H. Hayes* for complainant. *H. G. Toll* for defendants. April 26, 1915. Reparation to be awarded on presentation of proper proof.

7066. **CENTENNIAL SCHOOL SUPPLY Co. v. C. & E. I. R. R. Co. ET AL.** Unjustly discriminatory rates on blackboards from Chicago Heights, Ill., to Denver, Colo. April 26, 1915. *C. Whitehead* and *A. L. Vogl* for complainant. *R. C. Fyfe* for defendants. No reparation.

7093. **RADINSKY v. U. P. R. R. Co. ET AL.** Unreasonable rates on rags from Denver, Colo., to Portland, Oreg. *A. L. Vogl* and *C. Whitehead* for complainant. *H. A. Scandrett* and *L. T. Wilcox* for defendants. April 26, 1915. Reparation for \$40.90.

7097. **BURNS BAKING Co. v. AMERICAN EXPRESS Co. ET AL.** Express rates on pie containers from Omaha, Nebr., to points in Iowa, not found unreasonable. *W. H. De France* for complainant. *G. D. Patterson*, *J. H. Butler*, and *G. F. Johnson* for defendants. April 26, 1915. Complaint dismissed.

7102. **NIVISON-WEISKOPF Co. v. Ft. W., C. & L. R. R. Co. ET AL.** Alleged unlawful rates on strawboard from Eaton, Ind., to Reading, Ohio, not sustained. *G. M. Freer* for complainant. *J. B. Cockrum* and *A. P. Burgwin* for defendants. April 26, 1915. Complaint dismissed.

7151. **PERKINS GLUE Co. v. L. V. R. R. Co. ET AL.** Unreasonable rates on cassava flour from New York, N. Y., to Lansdale, Pa. *E. L. Gilbert* for complainant. *W. L. Kinter* for defendants. April 26, 1915. Reparation for \$104.76.

7237. **NEW RICHMOND ROLLER MILLS Co. ET AL. v. M., St. P. & S. S. MARIE Ry. Co.** Unreasonable rates on straw from points in Wisconsin to Chicago, Ill. *W. T. Doar* for complainants. *A. H. Lossow* for defendant. May 11, 1915. Reparation for \$104.67.

7269. **COLONIAL SALT Co. v. PA. Co. ET AL.** Drayage charges on salt shipped from Akron, Ohio, to Crisfield, Md., not caused by misrouting. *W. J. Tomkins* for complainant. *L. E. Hinkle* for defendants. May 11, 1915. Complaint dismissed.

7316. **CHICKASAW LUMBER Co. v. L. & N. R. R. Co. ET AL.** Unreasonable rates on lumber from Marianna, Fla., to eastern points. *C. Kirven* for complainant. *N. W. Proctor* for defendants. May 11, 1915. Reparation to be awarded on presentation of proper proof.

6992. **ROCKFORD PAPER BOX BOARD Co. v. I. C. R. R. Co. ET AL.** Unreasonable rates on silicate of soda solution from Grasselli, Ind., to Rockford, Ill. *C. S. Bather* for complainant. *A. P. Humburg* for defendants. April 26, 1915. Reparation to be awarded on presentation of proper proof.

7005. **WILLIAMS Co. v. PA. Co. ET AL.** Unreasonable rates on sewer pipe and flue linings from Parral, Ohio, to Hancock, Mich. *C. E. McLean* for complainant. *R. H. Widdicombe* for defendants. April 26, 1915. Reparation for \$21.18.

7017. **FORD MFG. Co. v. C., B. & Q. R. R. Co. ET AL.** Rates on roofing felt from Clinton, Iowa, to Denver, Colo., not found unreasonable. *B. F. Fuller* for complainant. *R. B. Scott* and *W. F. Dickinson* for defendants. April 26, 1915. Complaint dismissed.

7085. **UNION TANNING Co. v. L. & N. R. R. Co. ET AL.** Rates on tan bark from Tellico Plains, Tenn., to Chattanooga, Tenn., not found unreasonable. *W. R. Campbell* for complainant. *A. M. Bull* and *E. D. Mohr* for defendants. April 26, 1915. Complaint dismissed.

7079. **STUTTGART RICE MILL Co. v. T. & N. O. R. R. Co. ET AL.** Unreasonable rates on rice from Orange, Tex., to Stuttgart, Ark. *W. M. Taylor* for complainant. *R. D. Coleman* for defendants. April 26, 1915. Reparation for \$268.92.

6538. **SCATTERGOOD & Co. v. L. S. & M. S. RY. Co. ET AL.** Unreasonable rates on corn from Lafayette, Ind., to Tamaqua, Pa. *S. F. Scattergood*, *J. K. Scattergood*, *G. C. Wheeler*, and *W. B. Scattergood* for complainants. *C. T. Wolfe* and *W. L. Kinter* for defendants. May 11, 1915. Reparation for \$6.16.

6972. **ZELNICKER SUPPLY Co. v. St. J. & G. I. RY. Co. ET AL.** (Portion of fourth section application No. 461.) Unreasonable rates on railroad rails and fastenings from St. Joseph, Mo., to Alexandria, La. Fourth section application denied. *J. D. Fidler* for complainant. *S. E. Stohr* and *H. A. Weaver* for defendants. April 26, 1915. Reparation for \$113.51.

7051. **SCHLOSS & KAHN v. C. OF G. RY. Co.** Rates on bagging from Savannah, Ga., to points in Alabama not found unreasonable. *Thetford, Blakey & Strassburger* for complainants. *M. C. Hall* for defendant. April 26, 1915. Complaint dismissed.

6810. **SOUTHPORT MILL, LTD., v. St. L. S. W. RY. Co. OF TEXAS ET AL.** Unreasonable rates on cottonseed cake from Texas points to New Orleans, La. *T. M. Miller* for complainant. *E. A. Haid*, *J. D. Youman*, and *R. D. Reeves* for defendants. April 26, 1915. Reparation to be awarded on presentation of proper proof.

7284. **STANDARD OIL Co. v. PA. R. R. Co. ET AL.** Damages for failure to furnish car doors for shipments of petroleum coke. *L. H. Benner* and *T. R. Jackson* for complainant. *G. H. Cobb* for defendants. April 26, 1915. Reparation for \$312.

6519. **SMALL & Co. ET AL. v. I. C. R. R. Co.** Alleged unjust discrimination against Evansville, Ind., and Henderson, Ky., in elevation allowances removed by adjustment of carrier. *J. T. Walker* and *H. B. Walker* for complainant. *R. V. Fletcher* for defendant. May 11, 1915. Complaint dismissed.

6632 and 6971. **PLATTEN PRODUCE Co. v. M., St. P. & S. S. M. RY. Co. ET AL.** **PLATTEN PRODUCE Co. ET AL. v. C., M. & St. P. RY. Co. ET AL.** Rates on Christmas trees from points in Michigan, Wisconsin, and Minnesota to various interstate points justified. *G. A. Platten* and *P. Sheridan* for complainants. *R. C. Fyfe* for defendants. May 11, 1915. Complaints dismissed.

6875. **ATLAS PORTLAND CEMENT Co. v. C., B. & Q. R. R. Co.** Demurrage charges on swinging boom at Hannibal, Mo., properly assessed. *J. A. Upshur* for complainant. *G. Morton* for defendant. May 11, 1915. Complaint dismissed.

6936 and 6936 (Sub-No. 1). **MCCAULL-DINSMORE Co. v. C., B. & Q. R. R. Co. ET AL.** **SAME v. C., St. P., M. & O. RY. Co. ET AL.** Rates on corn from Sheldon, Iowa, to Kansas City, Mo., and Leavenworth, Kans., not found unlawful; nor were

the shipments misrouted. *S. J. McCaull* for complainants. *G. P. Lyman, W. D. Burr,* and *F. B. Clark* for defendants. May 3, 1915. Complaints dismissed.

7125. *ARKANSAS RICE Co. v. L. W. R. R. Co. ET AL.* Unreasonable rates on rice from Lake Charles, La., to Pine Bluff, Ark. *W. M. Taylor* for complainant. *C. W. Owen* and *R. D. Coleman* for defendants. May 3, 1915. Reparation for \$108.25.

7129. *KANSAS CHEMICAL MFG. Co. v. A., T. & S. F. Ry. Co. ET AL.* Western classification provision as to estimated weight for ammoniacal liquor not found unreasonable. *L. W. Apgar* and *L. C. Hughes* for complainant. *A. A. Hurd, B. F. E. Marsh,* and *J. C. La Coste* for defendants. May 11, 1915. Complaint dismissed.

7224. *GREAT WESTERN SMELTING & REFINING Co. v. B. & O. S. W. R. R. Co. ET AL.* Unreasonable rates on spelter from Beckemeyer, Ill., to West Pittston, Pa. *S. Spiro* for complainant. *E. Hart, jr.,* for defendants. May 11, 1915. Reparation for \$68.44.

7299. *REEVES COAL Co. v. C., M. & St. P. Ry. Co. ET AL.* Rates on coal from Milwaukee, Wis., to Woden, Iowa, not found unreasonable. *S. B. Houck* for complainant. *C. A. Lahey* for defendants. May 3, 1915. Complaint dismissed.

7300. *REEVES COAL Co. v. C., M. & St. P. Ry. Co.* Unreasonable track-storage charges on coal at Woonsocket, S. Dak. *S. B. Houck* for complainant. *C. A. Lahey* for defendant. May 3, 1915. Reparation for \$8.

7335. *SCOTCH LUMBER Co. v. M. C. R. R. Co. ET AL.* Rates on soda from Wyandotte, Mich., to Fulton, Ala., not found unreasonable. *J. T. Slatter* for complainant. *R. W. Moore* and *M. C. Hall* for defendants. May 3, 1915. Complaint dismissed.

6945 and 7087. *BAGDAD LAND & LUMBER Co. v. L. & N. R. R. Co. SAME v. SAME.* Rates on turpentine stills and fixtures and kindred articles from Paxton, Fla., to Milton Fla., and on railroad rails, trestle timbers, spikes, and angle bars from Paxton, Fla., to Laurel Hill, Fla., not found unreasonable; but rates on rosin from Paxton to Milton found unreasonable. *G. M. Stephen* for complainant. *E. D. Mohr* for defendant. April 26, 1915. Reparation for \$192.85.

6994. *REYMER & BROTHERS v. C. & N. W. Ry. Co. ET AL.* Unreasonable rates on condensed milk from Geneva, Ill., to Pittsburgh, Pa. *F. V. Cassell* for complainant. *J. R. Miller* and *A. P. Burgwin* for defendants. April 26, 1915. Reparation for \$49.97.

7385. *ROSE & WOBBE v. C., C., C. & St. L. Ry. Co. ET AL.* Unreasonable rates on tobacco fertilizer from Dayton, Ohio, to Broad Brook and Windsor Locks, Conn. *S. N. Levy* for complainant. *E. S. Ballard* and *S. S. Perry* for defendants. April 30, 1915. Reparation to be awarded on presentation of proper proof.

6133. *OTIS MFG. Co. v. I. C. R. R. Co. ET AL.* (Fourth section application Nos. 2194 and 2195.) Unreasonable rates on lumber from New Orleans, La., to Grand Rapids, Mich. *G. M. Stephen* and *S. J. Bolton* for complainant. *F. W. Gwathmey, R. Walton Moore, M. P. Callaway,* and *E. D. Mohr* for defendants. April 3, 1915. Fourth section applications denied. Reparation to be awarded on presentation of proper proof.

I. & S. 551. *RETURN TRANSPORTATION OF BRINE.* Proposed cancellation of tariff provision as to free transportation of brine, not justified. *H. C. Barlow, L. W. Hathaway, L. F. Berry, F. A. Brown,* and *H. A. Laing* for portestants. *E. S. Ballard, J. Stillwell, J. Cameron, F. G. Wright,* and *J. F. McWilliams* for respondents. May 25, 1915. No reparation.

6479 and 6479 (Sub-No. 1). *ACME WHITE LEAD & COLOR WORKS ET AL. v. N. P. Ry. Co. ET AL. DOERR-MITCHELL ELECTRIC Co. ET AL v. SAME.* Previous order amended as to measure of reparation. May 25, 1915. Reparation awarded in prior report.

6967. *LOMPOC PRODUCE & REAL ESTATE Co. v. EL PASO & S. W. Co. ET AL.* Rates on beans and mustard seed from Lompoc, Cal., to St. Louis, Mo., not found unreasonable. *H. F. McKelvey* for complainant. *G. D. Squires* for defendants. May 25, 1915. Complaint dismissed.

7258. COLUMBUS BOARD OF TRADE v. A. O. L. R. R. Co. ET AL. Rates on scrap iron from Albany, Ga., to Alabama City, Ala., not found unreasonable. *S. A. Spivey* and *E. S. Waddell* for complainant. *F. W. Gwathmey* for defendants. May 25, 1915. Complaint dismissed.

7274. SLANE GLASS Co. v. V. & S. W. RY. Co. ET AL. Rates on sand from Mendota, Va., to Statesville, N. C., not found unreasonable. *Q. A. Stephenson* for complainant. *F. W. Gwathmey* for defendants. May 25, 1915. Complaint dismissed.

7302. REEVES COAL Co. v. O. G. W. R. R. Co. Reconsigning charge on coal at Oelwein, Iowa, not improperly collected. *S. B. Houck* for complainant. *R. W. Goodel* for defendant. May 25, 1915. Complaint dismissed.

I. & S. 562. RATES ON LIVE STOCK, FRESH MEATS, AND PACKING-HOUSE PRODUCTS. Certain schedules ordered canceled. *Cassoday, Butler, Lamb & Foster, C. J. Faulkner, jr., H. K. Crafts, W. W. Manker, R. D. Rynder, F. H. Frederick, R. O'Hara, L. M. Walter, A. W. McLaren, C. B. Heinemann, W. R. Brown, E. W. Skipworth, O. W. Oberg, W. E. McCornack,* and *R. C. Taylor* for protestants. *L. E. Hinkle* and *E. Morris* for respondents. June 2, 1915. No reparation.

I. & S. 521. SWITCHING CHARGES AT BERLIN, N. H. Proposed increases not justified. *G. H. Eaton* for respondents. *D. W. Linton* for protestants. June 3, 1915. No reparation.

6629. PITTSBURGH METAL BED Co. v. N. Y. C. & H. R. R. R. Co. ET AL. Rates on brass tubing from Croton and Hudson, N. Y., to Pittsburgh, Pa., not found unreasonable. *J. B. Niebaum* for complainant. *E. S. Ballard* for defendants. June 2, 1915. Complaint dismissed.

6698. WESTERN CLOCK Co. v. C. B. & Q. R. R. Co. ET AL. Rates on clocks and watches from La Salle Ill., to Pacific coast terminals not found unreasonable. *C. Griggs, M. F. Gallagher,* and *E. B. Wilkinson* for complainant. *R. H. Countiss, R. C. Fyfe, J. L. Coleman, A. H. Lossow, W. A. Kittermaster* and *O. W. Dynes* for defendants. June 2, 1915. Complaint dismissed.

6793. BRENNER LUMBER Co. v. M. L. & T. R. R. & S. S. Co. Unreasonable rates on logs from Barbreck and Gold Dust, La., to Alexandria, La. *H. J. Fernandez* for complainant. *Denegre, Loevy & Chaffe* and *F. H. Wood* for defendant. June 2, 1915. Reparation to be awarded on presentation of proper proof.

6995. LUCKE & Co. v. WABASH R. R. Co. ET AL. Rates on brick from Attica, Ind., to Harvey, Ill., not found unreasonable. *G. M. Stephen* for complainant. *N. S. Brown* and *P. T. Finnegan* for defendants. June 2, 1915. Complaint dismissed.

7046. HARRIS v. M. & ST. L. R. R. Co. ET AL. Rates on contractors' outfits from points in Iowa and Illinois to Minneapolis, Minn., not found unreasonable. *E. S. Bibb* and *G. H. Selover* for complainant. *F. B. Townsend* and *G. P. Lyman* for defendants. June 2, 1915. Complaint dismissed.

7075. VERHALEN & Co. v. ST. L., I. M. & S. RY. Co. ET AL. Rates on peaches from Greenwood, Ark., to Chicago, Ill., not found unreasonable. *A. O. Davies* for complainant. *F. G. Wright* and *L. Weiler* for defendants. June 2, 1915. Complaint dismissed.

7121. SOUTH TEXAS GRAIN Co. v. ST. L., B. & M. RY. Co. ET AL. Rates on hay from Safford, Ariz., to San Benito, Mission, and Edinburg, Tex., not found unreasonable; but shipments to Mission and Edinburg found to have been misrouted. *J. W. Wilkinson* for complainant. *R. C. Fulbright, J. R. Christian,* and *F. H. Wood* for defendants. June 3, 1915. Reparation for \$12.42.

7243. MURPHY Co. v. M., ST. P. & S. S. MARIE RY. Co. ET AL. Unreasonable rates on potatoes from points in Wisconsin to Sioux City, Iowa. *C. F. Murphy* for complainant. *H. B. Ramsey* for defendant. June 3, 1915. Reparation for \$21.60.

7271. COLONIAL SALT Co. v. PA. Co. ET AL. Rates on salt from Akron, Ohio, to Cordele, Ga., not found unreasonable. *W. J. Tomkins* for complainant. *L. E. Hinkle* and *R. W. Moore* for defendants. June 3, 1915. Complaint dismissed.

734 REPARATION CASES DISPOSED OF IN UNREPORTED DECISIONS.

7325. **POWELL-MYERS LUMBER CO. v. L. & N. R. R. Co. ET AL.** Reconsignment and diversion should be allowed on lumber in transit from Reids, Ala., to Cairo, Ill., at Nashville and other points. *H. P. Aldworth* and *Stuart MacKibbin* for complainant. *E. D. Mohr* for defendants. June 3, 1915. Reparation for \$51.22.

7419. **HOLLAND-BLOW STAVE CO. v. L. & N. R. R. Co.** Rates on stave bolts and staves from Hartsells, Ala., to Decatur, Ala., not found unlawful. *J. T. Slatter* for complainant. *W. Burger* for defendant. June 3, 1915. Complaint dismissed.

6254. **ENNIS, BROWN CO. v. SO. PAC. CO.** (2 other cases.) Nonabsorption of storage charges on beans, onions, and potatoes, at certain California points not found unjustly discriminatory. *G. J. Bradley* for complainant. *C. W. Durbrow, F. H. Wood,* and *A. P. Matthew* for defendants. June 2, 1915. Complaints dismissed.

7213 (Sub-No. 1). **OHIO IRON & METAL CO. v. C., M. & ST. P. RY. CO.** Rate on scrap iron from Milwaukee, Wis., to West Allis, Wis., beyond Commission's jurisdiction. *S. J. Posen* for complainant. *O. W. Dynes* for defendant. June 3, 1915. Complaint dismissed.

7278. **MERCHANTS' TOBACCO MFG. CO. v. SO. RY. CO. ET AL.** Allegation of damage on shipments of tobacco from Greenville, Tenn., to interstate points not sustained. *J. Armitage* for complainant. *E. H. Hart* and *J. T. Bowe* for defendants. June 3, 1915. Complaint dismissed.

7301. **REEVES COAL CO. v. P. M. R. R. CO. ET AL.** Reconsigning charge on coal at Ludington, Mich., not found unlawful. *S. B. Houck* for complainant. *C. M. Booth* for defendants. June 3, 1915. Complaint dismissed.

7322. **PRODUCERS SUPPLY CO. v. MIDLAND VALLEY R. R. CO.** Scrap-iron rates should apply to shipments of old iron pipe and boiler tubes from Fort Smith, Ark., to Tulsa, Okla. *E. N. Adams* for complainant. *J. E. White* and *E. D. Redenbaugh* for defendant. June 3, 1915. Complaint dismissed.

6757. **PLUTO POWDER CO. v. ANN ARBOR R. R. CO. ET AL.** Rates on pulverized wood from Philadelphia, Pa., to Ishpeming, Mich., not found unreasonable. *C. E. Hohn* for complainant. *F. L. Ballard, E. P. Bates, R. T. Russell, D. P. Connell,* and *R. N. Collyer* for defendants. June 7, 1915. Complaint dismissed.

7039. **HUNKINS-WILLIS LIME & CEMENT CO. v. I. SN. RY. CO. ET AL.** Unduly prejudicial rates on lime from Mosher, Mo., to Mosinee, Wis. *F. W. Schneider* for complainant. *C. A. Lahey* and *W. H. Ogborn* for defendants. June 2, 1915. No reparation.

7310. **JERGENS CO. v. P., C., C. & ST. L. RY. CO. ET AL.** Unreasonable rates on soap from Cincinnati, Ohio, to Minneapolis, Minn. *O. M. Rogers* for complainant. *J. D. Couffer* and *W. Nichols* for defendants. June 3, 1915. Complaint dismissed.

6846. **MUTUAL OIL CO. v. A., T. & S. F. RY. CO.** Lawfully published through interstate rates cannot be changed by device of breaking shipment at intermediate point. *C. D. Chamberlain* for complainant. *T. J. Norton* and *A. A. Hurd* for defendants. June 8, 1915. No order entered.

6106. **BOTT BROS. MFG. CO. v. C., B. & Q. R. R. CO. ET AL.** Unreasonable rates on barrel staves and heading from points in Missouri and Arkansas to Alexandria, Mo. *G. F. Thomas* for complainant. *E. A. Haid, S. H. West, W. Gray,* and *F. G. Wright* for defendants. June 2, 1915. Reparation to be awarded on presentation of proper proof.

6898. **INDEPENDENT COOPERAGE CO. v. N., C. & ST. L. RY. ET AL.** Reconsignment and diversion allowed on elm hoops in transit from Hickman, Ky., to Goderich, Ontario, at Nashville and other points. *F. G. Pick* and *H. D. Tumbleson* for complainant. *R. W. Moore, F. W. Guathmey, C. D. Drayton,* and *E. D. Mohr* for defendants. June 14, 1915. Reparation for \$19.75.

6067. **BRADLEY LUMBER CO. v. A. A. R. R. CO. ET AL.** Shipments of lumber and box shooks involved were covered by the Tap Line case. *R. W. Hall* and *George Reeves*

for complainant. *H. G. Herbel, C. C. P. Rausch, W. F. Dickerson, W. T. Hughes, J. E. Johansen, J. M. Simon, J. W. Allen, and F. H. Sullivan* for defendants. May 29, 1915. Reparation to be awarded on presentation of proper proof.

7351. *NYE SCHNEIDER FOWLER CO. v. C. & N. W. RY. CO. ET AL.* Unreasonable rates on corn from Arlington, Nebr., to Kansas City, Mo. *E. P. Smith* for complainant. *W. H. Jones* for defendants. April 3, 1915. Reparation for \$62.95.

3544. *BASCOM-PORTER CO. v. A., T. & S. F. RY. CO.* Unreasonable rates on lumber from Louisiana and Texas points to Las Cruces, N. Mex. *R. B. Daniel* for complainant. *R. Dunlap, T. J. Norton, and J. L. Coleman* for defendant. June 14, 1915. Reparation for \$996.45.

6675. *WAUKESHA LIME & STONE CO. v. C., M. & ST. P. RY. CO. ET AL.* Failure to absorb switching charges on gravel at Waukesha, Wis., not found unreasonable. *I. W. Prestorius* for complainant. *O. W. Dynes, and A. H. Lossow* for defendants. June 30, 1915. Complaint dismissed.

6683 and 6748. *SOUTHERN WISCONSIN SAND & GRAVEL CO. v. C. & N. W. RY. CO. WILCOX CO. v. SAME.* Switching charges on sand at Janesville, Wis., not found unreasonable. *J. A. Wagoner* for complainant. *C. C. Wright and R. H. Widdicombe* for defendant. June 30, 1915. Complaints dismissed.

7205. *SWIFT & CO. v. T. & P. RY. CO. ET AL.* Unreasonable rates on hides from Fort Worth, Tex., to Durbin and Marlinton, W. Va. *Maurice Weigle and F. H. Frederick* for complainants. *H. G. Herbel, F. B. Clark, J. C. Gutsch, and E. D. Mohr* for defendants. June 30, 1915. Reparation to be awarded on presentation of proper proof.

7015. *WATTAM & SON v. T. & P. RY. CO. ET AL.* Rates on bananas from New Orleans, La., to Glendive, Mont., not found unreasonable. *Lee Zumwalt* for complainants. *J. H. Barwise, C. P. Dowlin, E. L. Billingsley, and Charles Donnelly* for defendants. June 30, 1915. Complaint dismissed.

7549. *W. G. DUNNINGTON & CO. v. N., C. & ST. L. RY. ET AL.* Rates on tobacco from Paris, Tenn., to New Orleans, La., not found to have damaged complainants. *W. B. Sweeney* for complainants. No appearance for defendants. July 3, 1915. Complaint dismissed.

7293. *GULF LUMBER CO. v. G., H. & S. A. RY. CO. ET AL.* Rates on lumber from Fullerton, La., to Galveston, Tex., not found to have damaged complainant. *R. W. Hall* for complainant. *J. R. Christian* for defendants. June 30, 1915. Complaint dismissed.

7361. *WELSBACH CO. v. ATLANTIC CITY R. R. CO. ET AL.* Rates on lamp globes from Gloucester, N. J., to San Francisco, Cal., not found unreasonable. *R. J. Thompson* for complainant. *C. W. Durbrow* for defendants. June 30, 1915. Complaint dismissed.

7400. *ATLANTIC LUMBER CO., INC., v. N. S. R. R. CO. ET AL.* Unreasonable rates on lumber from Knightdale, N. C., to Hanover, Pa. *J. R. Walker* for complainant. *J. F. Dulton and E. P. Butes* for defendants. June 30, 1915. Reparation for \$11.54.

7333 and 7334. *MILWAUKEE MALTING CO. v. G., C. & S. F. RY. CO. ET AL. SAME v. I. & G. N. RY. CO. ET AL.* Unreasonable rates on malt from Fort Worth and Laredo, Tex., to Milwaukee, Wis. *G. A. Schroeder* for complainant. *D. L. Meyers* for defendants. June 30, 1915. Reparation for \$348.16.

NOTE.—The amount of reparation awarded in above cases aggregates \$13,149.10.

TABLE OF MEMORANDUM AND UNREPORTED CASES.

[NOTE.—Docket number in parentheses denotes memorandum opinion, and "U. R." in brackets denotes unreported reparation cases briefed at pages cited.]

	Page.
Abilene & S. Ry. Co., National Classification Committee of Lumber, Wooden Boxes and Allied Interests v. (5977).....	711
Acme Cement Plaster Co. v. G. R. & I. Ry. Co. [U. R. 1880].....	720
Acme White Lead & Color Works v. N. P. Ry. Co. [U. R. 2060].....	732
Alabama G. S. R. R. Co.:	
Nebraska Bridge Supply & Lumber Co. v. [U. R. 2005].....	728
Wilkes & Co. v. [U. R. 1969].....	726
Alshuler Co. v. C. & N. W. Ry. Co. [U. R. 2023].....	730
American Cement Plaster Co. v. L. S. & M. S. Ry. Co. (7404).....	712
American Exp. Co.:	
Burns Baking Co. v. [U. R. 2029].....	730
Providence Fruit & Produce Exchange v. [U. R. 1831].....	716
American Fork & Hoe Co. v. O., B. & Q. R. R. Co. [U. R. 1838].....	716
American Linseed Co. v. C. & N. W. Ry. Co. [U. R. 1934].....	723
American Vulcanized Fibre Co. v. B. & O. R. R. Co. [U. R. 1979].....	727
Anheuser-Busch Brewing Asso. v. C., R. I. & P. Ry. Co. [U. R. 1961].....	725
Ann Arbor R. R. Co.:	
Bradley Lumber Co. v. [U. R. 2089].....	734
McClintick & Co. v. [U. R. 1943]	724
Pluto Powder Co. v. [U. R. 2083].....	734
Reeves Coal Co. v. [U. R. 2000].....	728
Anthony v. L. V. R. R. Co. [U. R. 1850].....	717
Apalachicola N. R. R. Co., Cypress Lumber Co. v. [U. R. 1918].....	722
Arizona E. R. R. Co.:	
Landergin Bros. v. [U. R. 1965].....	726
Perry & Co. v. [U. R. 1871].....	719
Timpson Brokerage Co. v. [U. R. 1863].....	718
Arizona Lumber & Timber Co. v. A., T. & S. F. Ry. Co. [U. R. 1844].....	717
Arkansas Rice Co. v. L. W. R. R. Co. [U. R. 2049].....	732
Armstrong v. S. P. Co. [U. R. 1922].....	723
Atchison, T. & S. F. Ry. Co.:	
Arizona Lumber & Timber Co. v. [U. R. 1844].....	717
Bascom-Porter Co. v. [U. R. 2091].....	735
Commercial Club of Omaha v. (7659).....	713
Ennis, Brown Co. v. [U. R. 2078].....	734
Giesler & Co. v. [U. R. 1838].....	716
Great Western Smelting & Refining Co. v. [U. R. 1900].....	721
Hull Co. v. [U. R. 1887].....	720
Jones & Hurst v. [U. R. 1958].....	725
Kansas Chemical Mfg. Co. v. [U. R. 2050].....	732
Larzelere Co. v. [U. R. 1921].....	722
Lusby (et al.) v. [U. R. 1922].....	723
Mutual Oil Co. v. [U. R. 2086].....	734

738 TABLE OF MEMORANDUM AND UNREPORTED OPINIONS.

Atchison, T. & S. F. Ry. Co.—Continued.

	Page
Nichols v. [U. R. 1837].....	716
Nims v. [U. R. 1921].....	722
Pacific Fruit Exchange v. [U. R. 2026].....	730
Platt Produce Co. v. [U. R. 1921].....	722
Topeka Packing Co. v. [U. R. 1912].....	722
United States of America v. (7290).....	712
Weyl Zuckerman & Co. v. [U. R. 1921].....	722
Atha Tool Co. v. N., C. & St. L. Ry. [U. R. 1894].....	721
Athens Lumber Co. v. L. & N. W. R. R. Co. [U. R. 1869].....	719
Atlanta & St. A. B. Ry. Co., Baird Lumber Co. v. [U. R. 1980].....	727
Atlantic C. R. R. Co., Welsbach Co. v. [U. R. 2098].....	735
Atlantic C. L. R. R. Co.:	
Butters Lumber Co. v. [U. R. 1908].....	722
Camden Iron Works v. [U. R. 1991].....	727
Columbus (Ga.) Board of Trade v. [U. R. 2062].....	733
Hammer v. [U. R. 1956].....	725
Jackson-Wyatt Lumber Co. v. [U. R. 1882].....	720
National Wholesale Lumber Dealers Asso. v. [U. R. 1882].....	720
Rayner & Co. v. [U. R. 1898].....	721
Sizer & Co. v. [U. R. 1975].....	726
Virginia-Carolina Chemical Co. v. [U. R. 1849].....	717
Atlantic Lumber Co. (Inc.) v. N. S. R. R. Co. [U. R. 2099].....	735
Atlas Portland Cement Co. v. C., B. & Q. R. R. Co. [U. R. 2047].....	731
Baader v. L. & N. R. R. Co. [U. R. 1842].....	717
Bagdad Land & Lumber Co. v. L. & N. R. R. Co. [U. R. 2055].....	732
Baird Lumber Co. v. A. & St. A. B. Ry. Co. [U. R. 1980].....	727
Baltimore & O. R. R. Co.:	
American Vulcanized Fibre Co. v. [U. R. 1979].....	727
Metropolitan Branch Commuters' Asso. v. (7687).....	713
Baltimore & O. S. W. R. R. Co.:	
Coal Operators' Traffic Bureau v. (7868).....	713
Dewey Bros. Co. v. [U. R. 1892, 1974, 2015].....	720, 726, 729
Great Western Smelting & Refining Co. v. [U. R. 2051].....	732
Baltimore Steam Packet Co.:	
Brown Mercantile Co. v. [U. R. 1936].....	724
Shields-Metzler Grocery Co. v. [U. R. 1936].....	724
Barbaro & Co. v. I. C. R. R. Co. [U. R. 1906].....	721
Barnard Co. v. C. & N. W. Ry. Co. [U. R. 2019].....	721
Bascom-Porter Co. v. A., T. & S. F. Ry. Co. [U. R. 2091].....	735
Beebe & Runyan Furniture Co. v. U. P. R. R. Co. [U. R. 1976].....	726
Bekins-Speer Motor Co. v. S. P., L. A. & S. L. R. R. Co. [U. R. 1922].....	721
Beloit Iron Works v. C., M. & St. P. Ry. Co. [U. R. 1896].....	721
Benjamin v. M. C. R. R. Co. [U. R. 2025].....	730
Berkey & Gay Furniture Co. v. M. C. R. R. Co. [U. R. 1911].....	722
Birmingham v. C., I. & S. R. R. Co. [U. R. 1902].....	721
Board of Trade of Columbus, Ga., v. A. C. L. R. R. Co. [U. R. 2062].....	733
Boston & A. R. R. Co., Waterbury Felt Co. v. [U. R. 1963].....	726
Boston & M. R. R., Webb Granite & Construction Co. v. (7967).....	713
Bott Bros. Mfg. Co. v. C., B. & Q. R. R. Co. [U. R. 2087].....	734
Bradley Lumber Co. v. A. A. R. R. Co. [U. R. 2089].....	734
Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co. [U. R. 2069].....	733
Brine, Return Transportation of, in Wooden Tank Cars [U. R. 2059].....	732
Brittain Dry Goods Co. v. M. P. Ry. Co. [U. R. 1933].....	723

	Page.
Broderick & Bascom Rope Co. v. C., R. I. & P. Ry. Co. [U. R. 1859].....	718
Brown Co. v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Brown Mercantile Co. v. M. & P. R. R. Co. [U. R. 1936].....	724
Buchanan Coal Co. v. C., R. I. & P. Ry. Co. [U. R. 2018].....	729
Buffalo, R. & P. Ry. Co., Fitzgerald Co. v. [U. R. 1985].....	727
Buffalo Specialty Co. v. W. R. R. Co. [U. R. 1852].....	717
Burns Baking Co. v. American Exp. Co. [U. R. 2029].....	730
Burt Motor Car Co. v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Bush v. S. P. Co. [U. R. 1922].....	723
Business Asso. of Wichita v. M. V. R. R. Co. [U. R. 1999].....	728
Business Men's League of St. Louis v. C., B. & Q. R. R. Co. (7695).....	713
Butler Paper Co. v. C. P. Ry. Co. (7855).....	713
Butters Lumber Co. v. A. C. L. R. R. Co. [U. R. 1908].....	722
Buxton v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Byers Bros. & Co. v. U. P. R. R. Co. (7172).....	712
California Ice Co. v. M., St. P. & S. Ste. M. Ry. Co. (7502).....	712
Camden Iron Works v. A. C. L. R. R. Co. [U. R. 1991].....	727
Cameron & Co., Inc., v. St. L. & S. F. R. R. Co. [U. R. 1830].....	716
Cedar Rapids Grain Co. v. C., P. & St. L. Ry. Co. (6965).....	712
Cement Rates from Ada, Okla. [U. R. 1820].....	715
Cement Rates from West Coplay, Pa., to Virginia and West Virginia [U. R. 1990].	727
Centennial School Supply Co. v. C. & E. I. R. R. Co. [U. R. 2027].....	730
Central of G. Ry. Co.:	
Friedlaender & Co. v. [U. R. 1957].....	725
Jacksonville Machine Works v. [U. R. 1833].....	716
Schloss & Kahn v. [U. R. 2042].....	731
Central P. Ry. Co., Butler Paper Co. v. (7855).....	713
Chambers v. C. G. W. R. R. Co. [U. R. 1904].....	721
Chapman & Dewey Lumber Co. v. St. L. & S. F. R. R. Co. [U. R. 1874].....	719
Charleston & W. C. Ry. Co., Rice Mfg. Co. v. [U. R. 2012].....	729
Charleston Mining & Mfg. Co. v. S. Ry. Co. [U. R. 1944].....	724
Chattanooga Brewing Co. v. L. & N. R. R. Co. [U. R. 1870].....	719
Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co. [U. R. 1839].....	716
Chesapeake & O. Ry. Co.:	
Palmer & Semans Lumber Co. v. [U. R. 2011].....	729
Roessler & Hasslacher Chemical Co. v. [U. R. 1824].....	715
Cheesnutt Lumber Co. v. N. O & N. E. R. R. Co. [U. R. 1857].....	718
Chicago & A. R. R. Co., Zenith Milling Co. v. [U. R. 1867].....	719
Chicago & E. I. R. R. Co.:	
Centennial School Supply Co. v. [U. R. 2027].....	730
Miller & Son v. [U. R. 1884].....	720
Chicago & N. W. Ry. Co.:	
Alshuler Co. v. [U. R. 2023].....	730
American Linseed Co. v. [U. R. 1934].....	723
Barnard Co. v. [U. R. 2019].....	720
Gund Brewing Co. v. [U. R. 1846].....	717
Miller & Co. v. [U. R. 1872].....	719
Nye Schneider Fowler Co. v. [U. R. 2090].....	735
Reymer & Bros. v. [U. R. 2056].....	732
Smith & Sons v. [U. R. 1962].....	726
Southern Wisconsin Sand & Gravel Co. v. [U. R. 2093].....	735
Standard Oil Co. v. (7517).....	712
Wilcox Co. v. [U. R. 2093].....	735

740 TABLE OF MEMORANDUM AND UNREPORTED OPINIONS.

	Page.
Chicago, B. & Q. R. R. Co.:	
American Fork & Hoe Co. v. [U. R. 1838].....	716
Atlas Portland Cement Co. v. [U. R. 2047].....	731
Bott Bros. Mfg. Co. v. [U. R. 2087].....	734
Business Men's League of St. Louis v. (7695).....	713
Consolidated Fuel Co. v. [U. R. 1993].....	728
Ford Mfg. Co. v. [U. R. 2037].....	731
Gwynn v. [U. R. 1843].....	717
McCaull-Dinsmore Co. v. [U. R. 2048].....	731
Marty & Co. v. [U. R. 2008].....	729
National Washboard Co. v. [U. R. 1897].....	721
Rosenbaum & Son v. [U. R. 1946].....	724
Western Clock Co. v. [U. R. 2068].....	733
Chicago G. W. R. R. Co.:	
Chambers v. [U. R. 1904].....	721
Dubuque Altar Mfg. Co. v. [U. R. 1967].....	726
Gamble Robinson Co. v. [U. R. 1848].....	717
Reeves Coal Co. v. [U. R. 2064].....	733
Chicago, I. & S. R. R. Co., Birmingham v. [U. R. 1902].....	721
Chicago Lumber & Coal Co. v. M. P. Ry. Co. [U. R. 1893].....	721
Chicago, M. & G. Ry. Co., National Lock Co. v. [U. R. 2007].....	729
Chicago, M. & P. S. Ry. Co., Retail Merchants Asso. of Montana v. [U. R. 1968].....	726
Chicago, M & St. P. Ry. Co.:	
Beloit Iron Works v. [U. R. 1896].....	721
Diehl Lumber Co. v. [U. R. 1992].....	727
Hynes Elevator Co. v. [U. R. 1895].....	721
King Lumber & Mfg. Co. v. (7510).....	712
Lowe Co. v. [U. R. 1817].....	715
Magill & Co. v. (6430).....	711
Navassa Guano Co. v. [U. R. 1879].....	719
New Monarch Machine & Stamping Co. v. (7907).....	713
Ohio Iron & Metal Co. v. [U. R. 2079].....	734
Platten Produce Co. v. [U. R. 2046].....	731
Reeves Coal Co. v. [U. R. 2052, 2053].....	732
Vaughan's Seed Store v. [U. R. 1950].....	725
Walrath & Sherwood Lumber Co. v. [U. R. 1992].....	727
Waukesha Lime & Stone Co. v. [U. R. 2092].....	735
Chicago, P. & St. L. R. R. Co.:	
Cedar Rapids Grain Co. v. (6965).....	712
Utah Junk Co. v. [U. R. 1910].....	722
Chicago, R. I. & P. Ry. Co.:	
Anheuser-Busch Brewing Asso. v. [U. R. 1961].....	725
Broderick & Bascom Rope Co. v. [U. R. 1859].....	718
Buchanan Coal Co. v. [U. R. 2018].....	729
Citizens' Lumber Co. v. (7928).....	713
Davis v. [U. R. 1864].....	718
Fulkerson v. [U. R. 1927].....	723
Ingham Lumber Co. v. [U. R. 1931].....	723
Lee Co. v. [U. R. 1988].....	727
Parlin & Orendorff Co. v. [U. R. 1925].....	723
Pugh Mfg. Co. v. [U. R. 1940].....	724
Walrath & Sherwood Lumber Co. v. [U. R. 1825].....	715
Zelnicker Supply Co. v. [U. R. 1903].....	721
Zimmerman v. [U. R. 1907].....	721

	Page.
Chicago, St. P., M. & O. Ry. Co., McCaull-Dinsmore Co. v. [U. R. 2048].....	731
Chicago, T. H. & S. E. Ry. Co., Old Vincennes Distillery Co. v. [U. R. 1881].	720
Chickasaw Lumber Co. v. L. & N. R. R. Co. [U. R. 2034].....	730
Church v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Cincinnati Grain Co. v. L. & N. R. R. Co. [U. R. 1883].....	720
Cincinnati, H. & D. Ry. Co., Weakley & Worman Co. v. [U. R. 1890].....	720
Cincinnati, N. O. & T. P. Ry. Co., Thatcher Medicine Co. v. [U. R. 1856].....	718
Cincinnati N. R. R. Co., Peninsular Portland Cement Co. v. [U. R. 2024].....	730
Citizens' Lumber Co. v. C., R. I. & P. Ry. Co. (7928).....	713
Cleveland, C., C. & St. L. Ry. Co., Rose & Wobbe v. [U. R. 2057].....	731
Coal Operators' Traffic Bureau v. B. & O. S. W. R. R. Co. (7868).....	713
Cobb v. N. & W. Ry. Co. [U. R. 1945].....	724
Cobb County Chemical Mining Co. v. N., C. & St. L. Ry. [U. R. 1841].....	717
Collins v. T. & G. Ry. Co. [U. R. 1941].....	724
Colonial Salt Co. v. P. Co. [U. R. 2033, 2075].....	730, 733
Colonial Sugars Co. v. L. Ry. & N. Co. (6487).....	712
Colorado & S. Ry. Co.:	
Comley Lumber Co. v. [U. R. 1829].....	723
Daniels & Fischer Stores Co. v. [U. R. 1954].....	725
Marr Grocery Co. v. [U. R. 1936].....	724
United States Gypsum Co. v. [U. R. 1909].....	722
Colorado & W. Ry. Co., Du Pont de Nemours Powder Co. v. [U. R. 1924].....	723
Columbia Ry., Gas & Electric Co. v. S. Ry. Co. [U. R. 1920].....	722
Columbus (Ga.) Board of Trade v. A. C. L. R. R. Co. [U. R. 2062].....	733
Comley Lumber Co. v. C. & S. Ry. Co. [U. R. 1829].....	716
Commercial Club of Cullman, Ala., v. L. & N. R. R. Co. [U. R. 1916].....	722
Commercial Club of Omaha v. A., T. & S. F. Ry. Co. (7659).....	713
Commission Merchants National League of the United States v. P. R. R. Co. [U. R. 2004].....	728
Consolidated Fuel Co. v. C., B. & Q. R. R. Co. [U. R. 1993].....	728
Coulhurst v. G. T. W. Ry. Co. [U. R. 1922].....	723
Cowan Co. v. S. P., L. A. & S. L. R. R. Co. [U. R. 1922].....	723
Crilly v. E. P. & S. W. R. R. Co. [U. R. 1818].....	715
Cruikshank & Robinson v. P. R. R. Co. [U. R. 1888].....	720
Cullman Commercial Club v. L. & N. R. R. Co. [U. R. 1916].....	722
Cumberland Grocery Co. v. L. & N. R. R. Co. [U. R. 1826].....	715
Cumberland Telephone & Telegraph Co. v. I. C. R. R. Co. [U. R. 1878].....	719
Cypress Lumber Co. v. Apalachicola N. R. R. Co. [U. R. 1918].....	722
Daniels & Fischer Stores Co. v. C. & S. Ry. Co. [U. R. 1954].....	725
Darnell v. Y. & M. V. R. R. Co. [U. R. 1947].....	724
Davis v. St. L., I. M. & S. Ry. Co. [U. R. 1864].....	718
Day Lumber Co. v. N. P. Ry. Co. [U. R. 1905].....	721
Del Valle v. S. P., L. A. & S. L. R. R. Co. [U. R. 1922].....	723
Denver & R. G. R. R. Co., Goble, Trustee v. [U. R. 1926].....	723
Dewey Bros. Co. v.:	
B. & O. S. W. R. R. Co. [U. R. 1892, 1974, 2015].....	720, 726, 729
P., C., C. & St. L. Ry. Co. [U. R. 2014].....	729
Diehl Lumber Co. v. C., M. & St. P. Ry. Co. [U. R. 1992].....	727
Dixon Lumber Co. v. P., B. & W. R. R. Co. [U. R. 1908].....	722
Doerr-Mitchell Electric Co. v. N. P. Ry. Co. [U. R. 2060].....	732
Dubuque Altar Mfg. Co. v. C. G. W. R. R. Co. [U. R. 1967].....	726
Duckworth v. I. C. R. R. Co. [U. R. 1858].....	718
Duluth, S. S. & A. Ry. Co., Pulp & Paper Mfrs. Traffic Asso. v. [U. R. 1835]..	716

	Page.
Dunbar-Hansen Co. v. S. P. Co. [U. R. 1865].....	718
Dunnington & Co. v. N., C. & St. L. Ry. [U. R. 2096].....	735
Du Pont de Nemours Powder Co. v. C. & W. Ry. Co. [U. R. 1924].....	723
Eastern Motor Car. Co. v. A., T. & S. F. Ry. Co. [U. R. 1922].....	733
El Paso & S. W. Co., Lompoc Produce & Real Estate Co. v. [U. R. 2061].....	732
El Paso & S. W. R. R. Co., Crilly v. [U. R. 1818].....	715
English Motor Car Co. v. S. P. Co. [U. R. 1922].....	723
Ennis, Brown Co. v. S. P. Co. [U. R. 2078].....	734
Erie R. R. Co., German American Car Co. v. (6391).....	711
Fish & Co. v. S. A. L. Ry. (7720).....	713
Fitzgerald Co. v. B., R. & P. Ry. Co. [U. R. 1985].....	727
Florida E. C. Ry. Co., Wilcox v. [U. R. 1834].....	716
Ford Mfg. Co. v. C., B. & Q. R. R. Co. [U. R. 2037].....	731
Fort Wayne, C. & L. R. R. Co., Nivison-Weiskopf Co. v. [U. R. 2030].....	730
Fresh Meats, Live Stock, and Packing-House Products from St. Louis, Chicago, and Other Points to New York, and Other Points [U. R. 2065].....	733
Fresh Meats, Packing-House Products and Other Commodities, Minimum Weights on [U. R. 1984].....	727
Friedlaender & Co. v. C. of G. Ry. Co. [U. R. 1957].....	725
Frost & Davis Lumber Co. v. N. S. R. R. Co. [U. R. 1952].....	725
Fulkerson v. C., R. I. & P. Ry. Co. [U. R. 1927].....	723
Fullerton & Robbe, Com'rs v. L. & N. W. R. R. Co. [U. R. 1869].....	719
Gallo v. L. V. R. R. Co. [U. R. 2022].....	730
Galveston, H. & S. A. Ry. Co., Gulf Lumber Co. v. [U. R. 2097].....	735
Gamble Robinson Co. v. C. G. W. R. R. Co. [U. R. 1848].....	717
Georgia S. & F. Ry. Co., Johnson & Wimsatt v. [U. R. 1821].....	715
German American Car Co. v. E. R. R. Co. (6391).....	711
Giesler & Co. v. A., T. & S. F. Ry. Co. [U. R. 1836].....	716
Gilbert Grocery Co. v. S. Ry. Co. [U. R. 1851].....	717
Gilhousen v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Goble, Trustee v. D. & R. G. R. R. Co. [U. R. 1926].....	723
Goddard Pickle & Preserve Co. v. I. T. R. R. Co. (7875).....	713
Gold Stamp Mining Co. v. G. N. Ry. Co. [U. R. 1978].....	727
Grain Rates between Winona, Minn., and Minneapolis, Minn. [U. R. 1959]....	725
Grand Rapids & I. Ry. Co.:	
Acme Cement Plaster Co. v. [U. R. 1880].....	730
Nichols & Cox Lumber Co. v. [U. R. 1853].....	717
Reed Foundry & Machine Co. v. [U. R. 1981].....	727
Grand T. Ry. Co. of Canada:	
Oakland Motor Car Co. of Michigan v. [U. R. 1866].....	718
Pittmans & Dean Co. v. [U. R. 1930].....	721
Grand T. W. Ry. Co.:	
Coulhurst v. [U. R. 1922].....	723
Manson Campbell Co. v. [U. R. 1970].....	726
Great N. Ry. Co.:	
Gold Stamp Mining Co. v. [U. R. 1978].....	727
Mapes v. [U. R. 1977].....	727
Retail Merchants Asso. of Montana v. [U. R. 1968].....	726
Zimmerman v. [U. R. 1907].....	721
Great Western Oil Refining Co. v. M., K. & T. Ry. Co. [U. R. 2002].....	728
Great Western Smelting & Refining Co. v.:	
A., T. & S. F. Ry. Co. [U. R. 1900].....	721
B. & O. S. W. R. R. Co. [U. R. 2051].....	732

	Page.
Greater Des Moines Committee v. U. P. R. R. Co. (4594).....	711
Greer-Beatty Clay Co. v. P. Co. [U. R. 1955].....	725
Gulf & S. I. R. R. Co.; Williamsburg Lumber Co. v. [U. R. 1995].....	728
Gulf, C. & S. F. Ry. Co., Milwaukee Malting Co. v. [U. R. 2100].....	735
Gulf Lumber Co. v. G., H. & S. A. Ry. Co. [U. R. 2097].....	735
Gund Brewing Co. v. C. & N. W. Ry. Co. [U. R. 1846].....	717
Gwynn v. C., B. & Q. R. R. Co. [U. R. 1843].....	717
Hammer v. A. C. L. R. R. Co. [U. R. 1956].....	725
Hampton Grocery Co. v. S. Ry. Co. [U. R. 1851].....	717
Harmon & Co. v. O.-W. R. R. & N. Co. [U. R. 1923].....	723
Hart Bros. v. P. M. R. R. Co. [U. R. 1875].....	719
Harwood-Yancey-Young Co., for use and account of Harwood-Yancey-Rhea Co., v. L. & N. R. R. Co. [U. R. 1827]	715
Hershey v. N. C. Ry. Co. [U. R. 1877].....	719
Hice Mfg. Co. v. C. & W. C. Ry. Co. [U. R. 2012].....	729
Hirsch & Sons Iron & Rail Co. v. N. Y., N. H. & H. R. R. Co. [U. R. 1823]...	715
Hocking V. Ry. Co.:	
Pittsburg & Buffalo Co. v. [U. R. 1845]	717
Seagrave Co. v. (7842).....	713
Hoffman & Co. v. Y. & M. V. R. R. Co. (7834).....	713
Holland Blow Stave Co. v.:	
I. C. R. R. Co. [U. R. 1938].....	724
L. & N. R. R. Co. [U. R. 2077].....	734
Hood Brick Co. v. S. Ry. Co. [U. R. 1973].....	726
Hunkins-Willis Lime & Cement Co. v. I. S. Ry. Co. [U. R. 2084].....	734
Howard Motor Car Co. v. S. P. Co. [U. R. 1922].....	723
Hull Co. v.:	
A., T. & S. F. Ry. Co. [U. R. 1887].....	720
M. P. Ry. Co. [U. R. 1887, 1914].....	720, 722
Hynes Elevator Co. v. C., M. & St. P. Ry. Co. [U. R. 1895].....	721
Illinois C. R. R. Co.:	
Barbaro & Co. v. [U. R. 1906].....	721
Cumberland Telephone & Telegraph Co. v. [U. R. 1878].....	719
Duckworth v. [U. R. 1858].....	718
Holland Blow Stave Co. v. [U. R. 1938].....	724
Indiana Tie Co. v. [U. R. 1873].....	719
Otis Mfg. Co. v. [U. R. 2058].....	732
Rath Packing Co. v. [U. R. 2020].....	729
Rockford Paper Box Board Co. v. [U. R. 2035].....	731
Small & Co. v. [U. R. 2045].....	731
Sodeman Heat & Power Co. v. [U. R. 1971].....	726
Virginia-Carolina Chemical Co. v. [U. R. 1929].....	723
Illinois S. Ry. Co., Hunkins-Willis Lime & Cement Co. v. [U. R. 2034].....	734
Illinois T. R. R. Co., Goddard Pickle & Preserve Co. v. (7875).....	713
Independent Cooperage Co. v. N., C. & St. L. Ry. [U. R. 2088].....	734
Indian Refining Co. v. S. Ry. Co. [U. R. 1983].....	727
Indiana Tie Co. v. I. C. R. R. Co. [U. R. 1873].....	719
Ingham Lumber Co. v. C., R. I. & P. Ry. Co. [U. R. 1931].....	723
In re:	
Advances—	
Brine in Wooden Tank Cars [U. R. 2059].....	732
Cement Rates from West Coplay, Pa., to Virginia and West Virginia [U. R. 1990].....	727

744 TABLE OF MEMORANDUM AND UNREPORTED OPINIONS.

In re—Continued.

Advances—Continued.

	Page.
Grain Rates between Winona, Minn., and Minneapolis, Minn. [U. R. 1959].....	725
Live Stock, Fresh Meats, and Packing-House Products from St. Louis, Chicago, and Other Points to New York and Other Points [U. R. 2065]	733
Minimum Weights on Packing-House Products, Fresh Meats, and Other Commodities [U. R. 1984].....	727
Switching Charges at Berlin, N. H. [U. R. 2066].....	733
Cement Rates from Ada, Okla. [U. R. 1820].....	715
Divisions of Joint Rates for Transportation of Stone from Points in Indiana to Points in other States (2410)	711
Fourth Section Applications—	
No. 458 [U. R. 1894].....	721
Nos. 458, 603, and 3918 [U. R. 1841].....	717
No. 461 [U. R. 2003, 2041, 2094].....	723, 731, 735
No. 629 [U. R. 1859].....	718
Nos. 703, 799, and 1573 [U. R. 1964].....	726
No. 711 [U. R. 1891].....	720
Nos. 964 and 1862 [U. R. 1958].....	725
No. 990 [U. R. 1954].....	725
Nos. 1547, 1561, and 1780 [U. R. 1861].....	718
No. 1548 [U. R. 1855].....	718
No. 1562 [U. R. 1890].....	720
No. 1850 [U. R. 1977].....	727
No. 1851 [U. R. 1925].....	723
No. 1948 [U. R. 2020].....	729
No. 1952 [U. R. 1826, 1842, 1860, 1883].....	715, 717, 718, 720
No. 2060 [U. R. 1884].....	720
No. 2072 [U. R. 2015].....	729
Nos. 2194 and 2195 [U. R. 2058].....	732
No. 3419 [U. R. 1927].....	723
No. 4218 [U. R. 1864].....	718
Return Transportation of Brine in Wooden Tank Cars [U. R. 2059]	732
International & G. N. Ry. Co.:	
Milwaukee Malting Co. v. [U. R. 2100].....	735
Standard Milling Co. v. [U. R. 1928].....	723
Tyler Produce Co. v. [U. R. 1951].....	725
International Purchasing Co. v. St. L. & S. F. R. R. Co. [U. R. 1939].....	724
International Salt Co. of New York v. L. V. R. R. Co. [U. R. 1861].....	718
Ireland & Rollings v. St. L. & S. F. R. R. Co. [U. R. 1964].....	726
Jackson-Wyatt Lumber Co. v. A. C. L. R. R. Co. [U. R. 1882].....	720
Jacksonville Machine Works v. C. of G. Ry. Co. [U. R. 1833].....	716
Jergens Co. v. P., C., C. & St. L. Ry. Co. [U. R. 2085].....	734
Johnson & Wimsatt v. G. S. & F. Ry. Co. [U. R. 1821].....	715
Jones & Hurst v. A., T. & S. F. Ry. Co. [U. R. 1958].....	725
Jordan v. L. Ry. & N. Co. [U. R. 1901].....	721
Kalamazoo Tank & Silo Co. v. M. C. R. R. Co. (6065).....	711
Kanawha & W. V. R. R. Co., Kennedy & Co. v. [U. R. 1953]	725
Kansas Chemical Mfg. Co. v. A., T. & S. F. Ry. Co. [U. R. 2050].....	732
Kansas C. S. Ry. Co., Mansfield Hardwood Lumber Co. v. [U. R. 1885].....	720
Kennedy & Co. v. K. & W. Va. R. R. Co. [U. R. 1953].....	725
Kerrihard Co. v. S. Ry. Co. [U. R. 1855].....	718
King Lumber & Mfg. Co. v. C., M. & St. P. Ry. Co. (7510).....	712

	Page.
Kissel Automobile Co. v. S. P. Co. [U. R. 1922].....	723
Koshkonong-Brandsville Fruit Shippers' Asso. v. St. L. & S. F. R. R. Co. [U. R. 1862].....	718
Knight Mercantile Co. v. W. R. R. Co. [U. R. 1989].....	727
Lake S. & M. S. Ry. Co.:	
American Cement Plaster Co. v. (7404).....	712
National Supply Co. of Kansas v. [U. R. 1982].....	727
Scattergood & Co. v. [U. R. 2040].....	731
Landergin Bros. v. A. E. R. R. Co. [U. R. 1965].....	726
Larzelere Co. v. A., T. & S. F. Ry. Co. [U. R. 1921].....	722
Lee Co. v. C., R. I. & P. Ry. Co. [U. R. 1988].....	727
Ledge Consolidated Mining Co. v. D. & R. G. R. R. Co. [U. R. 1926].....	723
Lehigh V. R. R. Co.:	
Anthony v. [U. R. 1850].....	717
Gallo v. [U. R. 2022].....	730
International Salt Co. of New York v. [U. R. 1861].....	718
Patent Cereals Co. v. [U. R. 1917].....	722
Perkins Glue Co. v. [U. R. 2031].....	730
Lexington Mill & Elevator Co. v. U. P. R. R. Co. (6973).....	712
Lindsay-Walker Co. v. S. P. Co. [U. R. 1828].....	716
Live Stock, Fresh Meats, and Packing-House Products from St. Louis, Chicago, and Other Points to New York and Other Points [U. R. 2065].....	733
Lompoc Produce & Real Estate Co. v. E. P. & S. W. Co. [U. R. 2061].....	732
Lone Star Brewing Co. v. M., K. & T. Ry. Co. [U. R. 1987].....	727
Lord & Bushnell Co. v. T. & P. Ry. Co. [U. R. 2021].....	730
Los Angeles Alco Motor Sales Co. v. A., T. & S. F. Ry. Co. [U. R. 1922].....	723
Louisiana & N. W. R. R. Co., Fullerton & Robbe, Com'rs v. [U. R. 1869].....	719
Louisiana Ry. & N. Co., Colonial Sugars Co. v. (6487).....	712
Louisiana Ry. & N. Co., Jordan v. [U. R. 1901].....	721
Louisiana W. R. R. Co., Arkansas Rice Co. v. [U. R. 2049].....	732
Louisville & N. R. R. Co.:	
Baader v. [U. R. 1842].....	717
Bagdad Land & Lumber Co. v. [U. R. 2055].....	732
Chattanooga Brewing Co. v. [U. R. 1870].....	719
Chickasaw Lumber Co. v. [U. R. 2034].....	730
Cincinnati Grain Co. v. [U. R. 1883].....	720
Cullman Commercial Club v. [U. R. 1916].....	722
Cumberland Grocery Co. v. [U. R. 1826].....	715
Harwood-Yancey-Young Co., for use and account of Harwood-Yancey-Rhea Co. v. [U. R. 1827].....	715
Holland Blow Stave Co. v. [U. R. 2077].....	734
Marx & Sons v. [U. R. 1860].....	718
Morse Lumber Co. v. [U. R. 1919].....	722
Mount Pleasant Fertilizer Co. v. (7576).....	712
Powell-Myers Lumber Co. v. [U. R. 2076].....	734
Schloss & Kahn v. [U. R. 1994].....	728
Union Tanning Co. v. [U. R. 2038].....	731
Virginia-Carolina Chemical Co. v. [U. R. 1948].....	724
Warner Iron Co. v. [U. R. 2006].....	728
Lowe Co. v. C., M. & St. P. Ry. Co. [U. R. 1817].....	715
Lucke & Co. v. W. R. R. Co. [U. R. 2070].....	733
Lusby v. S. P. Co. [U. R. 1922].....	723
McCaull-Dinsmore Co. v. C., B. & Q. R. R. Co. [U. R. 2048].....	731

	Page.
McClintick & Co. v. A. A. R. R. Co. [U. R. 1943].....	724
McDiarmid Co. v. P. R. R. Co. [U. R. 1908].....	722
Magill & Co. v. C., M. & St. P. Ry. Co. (6430).....	711
Maine C. R. R. Co., Williams Co. v. [U. R. 2001].....	728
Mansfield Hardwood Lumber Co. v. K. C. S. Ry. Co. [U. R. 1885].....	720
Manson Campbell Co. v. G. T. W. Ry. Co. [U. R. 1970].....	726
Manufacturers Supply Co. v. M. & St. L. R. R. Co. [U. R. 2071].....	733
Mapes v. G. N. Ry. Co. [U. R. 1977].....	727
Marr Grocery Co. v. C. & S. Ry. Co. [U. R. 1936].....	724
Marty & Co. v. C., B. & Q. R. R. Co. [U. R. 2008].....	729
Marx & Sons v. L. & N. R. R. Co. [U. R. 1860].....	718
Maryland & P. R. R. Co., Brown Mercantile Co. v. [U. R. 1936].....	724
Maryland, D. & V. Ry. Co., Brown Mercantile Co. v. [U. R. 1936].....	724
Mascari Bros. v. St. L. & S. F. R. R. Co. [U. R. 1972].....	726
Mason City Hide & Fur Co. v. M. & St. L. R. R. Co. (7898).....	713
Meeds Lumber Co. v. N. O. G. N. R. R. Co. [U. R. 1960].....	725
Merchants' Tobacco Mfg. Co. v. S. Ry. Co. [U. R. 2080].....	734
Metropolitan Branch Commuters' Asso. v. B. & O. R. R. Co. (7687).....	713
Michigan C. R. R. Co.:	
Benjamin v. [U. R. 2025].....	730
Berkey & Gay Furniture Co. v. [U. R. 1911].....	722
Kalamazoo Tank & Silo Co. v. (6065).....	711
Scotch Lumber Co. v. [U. R. 2054].....	732
Midland V. R. R. Co.:	
Producers Supply Co. v. [U. R. 2082].....	734
Wichita Business Asso. v. [U. R. 1999].....	728
Miller v. S. P., L. A. & S. L. R. R. Co. [U. R. 1922].....	723
Miller & Co. v. C. & N. W. Ry. Co. [U. R. 1872].....	719
Miller & Sons v. C. & E. I. R. R. Co. [U. R. 1884].....	720
Milwaukee Malting Co. v. G., C. & S. F. Ry. Co. [U. R. 2100].....	735
Minimum Weights on Packing-House Products, Fresh Meats, and Other Com- modities [U. R. 1984].....	727
Minneapolis & St. L. R. R. Co.:	
Manufacturers Supply Co. v. [U. R. 2071].....	733
Mason City Hide & Fur Co. v. (7898).....	713
Rankin & Co. v. [U. R. 1937].....	724
Minneapolis, St. P. & S. Ste. M. Ry. Co.:	
California Ice Co. v. (7502).....	712
Murphey Co. v. [U. R. 2074].....	733
New Richmond Roller Mills Co. v. [U. R. 2032].....	730
Platten Produce Co. v. [U. R. 2046].....	731
Missouri, K. & T. Ry. Co.:	
Great Western Oil Refining Co. v. [U. R. 2002].....	728
Lone Star Brewing Co. v. [U. R. 1987].....	727
Missouri P. Ry. Co.:	
Brittain Dry Goods Co. v. [U. R. 1933].....	723
Chicago Lumber & Coal Co. v. [U. R. 1893].....	721
Hull Co. v. [U. R. 1887, 1914].....	720, 722
Mound City Roofing Tile Co. v. [U. R. 1886].....	720
Southwestern Milling Co. v. [U. R. 1867].....	719
Swift & Co. v. [U. R. 1868].....	719
Tootle-Campbell Dry Goods Co. v. [U. R. 1933].....	723
Wheeler & Motter Mercantile Co. v. [U. R. 1933].....	723

	Page.
Mobile & O. R. R. Co., Weis & Lesh Mfg. Co. v. [U. R. 1966].....	726
Monongahela River Consolidated Coal & Coke Co. v. U. R. R. Co. (6789).....	712
Monroe Hardware Co. v. N. Y., N. H. & H. R. R. Co. [U. R. 2010].....	729
Montana Retail Merchants Asso. v. N. P. Ry. Co. [U. R. 1968].....	726
Morgan's L. & T. R. R. & S. S. Co., Brenner Lumber Co. v. [U. R. 2069].	733
Morse Lumber Co. v. L. & N. R. R. Co. [U. R. 1919].....	722
Moss Tie Co. v. S. Ry. Co. [U. R. 1942].....	724
Mound City Roofing Tile Co. v. M. P. Ry. Co. [U. R. 1886].....	720
Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co. (7576).....	712
Mullins Lumber Co. v. S. Ry. Co. [U. R. 1908].....	722
Murphey Co. v. M., St. P. & S. Ste. M. Ry. Co. [U. R. 2074].....	733
Mutual Oil Co. v. A., T. & S. F. Ry. Co. [U. R. 2086].	734
Nardi's Sons v. P. R. R. Co. [U. R. 1847].....	717
Nashville, C. & St. L. Ry.:	
Atha Tool Co. v. [U. R. 1894].....	721
Cobb County Chemical Mining Co. v. [U. R. 1841].....	717
Dunnington & Co. v. [U. R. 2096].....	735
Independent Cooperage Co. v. [U. R. 2088].....	734
National Classification Committee of Lumber, Wooden Boxes, and Allied Interests v. A. & S. Ry. Co. (5977).....	711
National League of Commission Merchants of the United States v. P. R. R. Co. [U. R. 2004].....	728
National Lock Co. v. C., M. & G. Ry. Co. [U. R. 2007].....	729
National Supply Co. of Kansas v. L. S. & M. S. Ry. Co. [U. R. 1982].....	727
National Washboard Co. v. C., B. & Q. R. R. Co. [U. R. 1897].....	721
National Wholesale Lumber Dealers' Asso. v.:	
A C. L. R. R. Co. [U. R. 1882].....	720
N. S. R. R. Co. [U. R. 1952].....	725
National Wholesale Lumber Dealers' Asso., for Rice Lockwood Lumber Co., v. S. Ry. Co. [U. R. 1854].....	718
Navassa Guano Co. v. C., M. & St. P. Ry. Co. [U. R. 1879].....	719
Nebraska Bridge Supply & Lumber Co. v. A. G. S. R. R. Co. [U. R. 2005].	728
New Monarch Machine & Stamping Co. v. C., M. & St. P. Ry. Co. (7907).....	713
New Orleans & N. E. R. R. Co., Chesnutt Lumber Co. v. [U. R. 1857]	718
New Orleans G. N. R. R. Co., Meeds Lumber Co. v. [U. R. 1960].....	725
New Orleans, T. & M. R. R. Co., Texas Unit Construction Co. v. [U. R. 2003].....	728
New Richmond Roller Mills Co. v. M., St. P. & S. Ste. M. Ry. Co. [U. R. 2032].....	730
New York & B. Transp. Line, Brown Mercantile Co. v. [U. R. 1936].....	724
New York C. & H. R. R. Co.:	
Oman Bowling Green Stone Co. v. (5488).....	711
Parkinson Coke & Coal Co. v. [U. R. 1819].....	715
Patent Cereals Co. v. [U. R. 2013].....	729
Pittsburgh Metal Bed Co. v. [U. R. 2067].....	733
New York, N. H. & H. R. R. Co.:	
Hirsch & Sons Iron & Rail Co. v. [U. R. 1823].....	715
Monroe Hardware Co. v. [U. R. 2010].....	729
New York, O. & W. Ry. Co., Scattergood & Co. v. [U. R. 1832].....	716
Nichols v. A., T. & S. F. Ry. Co. [U. R. 1837].....	716
Nichols & Cox Lumber Co. v. G. R. & I. Ry. Co. [U. R. 1853].....	717
Nims v. A., T. & S. F. Ry. Co. [U. R. 1921].	722
Nivison-Weiskopf Co. v. F. W., C. & L. R. R. Co. [U. R. 2030].....	730

748 TABLE OF MEMORANDUM AND UNREPORTED OPINIONS.

Norfolk & W. Ry. Co.:	Page.
Cobb v. [U. R. 1945].....	724
Price Iron & Steel Co. v. [U. R. 2016].....	729
Radford-Portsmouth Veneer Co. v. [U. R. 1890].....	720
Norfolk S. R. R. Co.:	
Atlantic Lumber Co. (Inc.) v. [U. R. 2099].....	735
Frost & Davis Lumber Co. v. [U. R. 1952].....	725
Nat'l Wholesale Lumber Dealers' Asso. v. [U. R. 1952].....	725
Producers Lumber Co. v. [U. R. 2017].....	729
Northern C. Ry. Co.:	
Brown Mercantile Co. v. [U. R. 1936].....	724
Hershey v. [U. R. 1877].....	719
Northern P. Ry. Co.:	
Acme White Lead & Color Works v. [U. R. 2060].....	732
Day Lumber Co. [U. R. 1905].....	721
Doerr-Mitchell Electric Co. v. [U. R. 2060].....	732
Retail Merchants Asso. of Montana v. [U. R. 1968].....	726
Nye Schneider Fowler Co. v. C. & N. W. Ry. Co. [U. R. 2090].....	735
Oakland Motor Car Co. of Michigan v. G. T. Ry. Co. of Canada [U. R. 1866]...	718
Ohio Iron & Metal Co. v. C., M. & St. P. Ry. Co. [U. R. 2079].....	734
Old Vincennes Distillery Co. v. C., T. H. & S. E. Ry. Co. [U. R. 1881].....	720
Oliver-Finnie Co. v. P. & R. Ry. Co. [U. R. 1822].....	715
Oman Bowling Green Stone Co. v. N. Y. C. & H. R. R. R. Co. (5488).....	711
Oregon-Wash. R. R. & N. Co.:	
Harmon & Co. v. [U. R. 1923].....	723
Sechrist Mfg. Co. v. (4561).....	711
Otis Mfg. Co. v. I. C. R. R. Co. [U. R. 2058].....	732
Pacific Fruit Exchange v. A., T. & S. F. Ry. Co. [U. R. 2026].....	730
Packing-House Products, Fresh Meats, and Live Stock from St. Louis, Chicago, and Other Points to New York and Other Points [U. R. 2065].....	733
Packing-House Products, Fresh Meats, and Other Commodities, Minimum Weights on [U. R. 1984].....	727
Palmer & Semans Lumber Co. v. C. & O. Ry. Co. [U. R. 2011].....	729
Parkinson Coke & Coal Co. v. N. Y. C. & H. R. R. R. Co. [U. R. 1819].....	715
Parlin & Orendorff Co. v. C., R. I. & P. Ry. Co. [U. R. 1925].....	723
Patent Cereals Co. v.:	
L. V. R. R. Co. [U. R. 1917].....	722
N. Y. C. & H. R. R. R. Co. [U. R. 2013].....	729
Peninsular Portland Cement Co. v. C. N. R. R. Co. [U. R. 2024].....	730
Pennsylvania Co.:	
Colonial Salt Co. v. [U. R. 2033, 2075].....	730, 733
Greer-Beatty Clay Co. v. [U. R. 1955].....	725
Williams Co. v. [U. R. 2036].....	731
Pennsylvania R. R. Co.:	
Cruikshank & Robinson v. [U. R. 1888].....	720
McDiarmid Co. v. [U. R. 1908].....	722
Nardi's Sons v. [U. R. 1847].....	717
National League of Commission Merchants of the United States v [U R.2004].	728
Pennsylvania Salt Mfg. Co. v. [U. R. 1997].....	728
Standard Oil Co. of New York v. [U. R. 2044].....	731
Swift & Co. v. [U. R. 1915].....	722
Tyler Coal & Coke Co. v. [U. R. 1986].....	727
Zelnicker Supply Co. v. (7600).....	712
Pennsylvania Salt Mfg. Co. v. P. R. R. Co. [U. R. 1997].....	728

Pere M. R. R. Co.:	Page.
Hart Bros. v. [U. R. 1875].....	719
Reeves Coal Co. v. [U. R. 2081].....	734
Sifritt v. [U. R. 1913].....	722
Perkins Glue Co. v. L. V. R. R. Co. [U. R. 2031].....	730
Perry & Co. v. A. E. R. R. Co. [U. R. 1871].....	719
Philadelphia & R. Ry. Co., Oliver-Finnie Co. v. [U. R. 1822]	715
Philadelphia, B. & W. R. R. Co., Dixon Lumber Co. v. [U. R. 1908].....	722
Phosphate Mining Co. v. S. A. L. Ry. [U. R. 1908].....	722
Pioneer Fruit Co. v. S. P. Co. [U. R. 1998].....	728
Pittmans & Dean Co. v. G. T. Ry. Co. of Canada [U. R. 1930].....	723
Pittsburg & Buffalo Co. v. H. V. Ry. Co. [U. R. 1845].....	717
Pittsburgh, C., C. & St. L. Ry. Co.:	
Dewey Bros. Co. v. [U. R. 2014].....	729
Jergens Co. v. [U. R. 2085].....	734
Pittsburgh Metal Bed Co. v. N. Y. C. & H. R. R. R. Co. [U. R. 2067].....	733
Platt Produce Co. v. A., T. & S. F. Ry. Co. [U. R. 1921].....	722
Platten Produce Co. v. M., St. P. & S. Ste. M. Ry. Co. [U. R. 2046].....	731
Pluto Powder Co. v. A. A. R. R. Co. [U. R. 2083].....	734
Powell Grain Co. v. St. L., I. M. & S. Ry. Co. [U. R. 1876].....	719
Powell-Meyers Lumber Co. v.:	
L. & N. R. R. Co. [U. R. 2076].....	734
St. L. S. W. Ry. Co. [U. R. 1996].....	728
Price Iron & Steel Co. v. N. & W. Ry. Co. [U. R. 2016].....	729
Producers Fruit Co. v. S. P. Co. [U. R. 1891].....	720
Producers Lumber Co. v. N. S. R. R. Co. [U. R. 2017].....	729
Producers Supply Co. v. M. V. R. R. Co. [U. R. 2082].....	734
Providence Fruit & Produce Exchange v. American Exp. Co. [U. R. 1831]....	716
Pugh Mfg. Co. v. C., R. I. & P. Ry. Co. [U. R. 1940].....	724
Pulp & Paper Mfrs. Traffic Asso. v. D., S. S. & A. Ry. Co. [U. R. 1835].....	716
Radford-Portsmouth Veneer Co. v. N. & W. Ry. Co. [U. R. 1890].....	720
Radinsky v. U. P. R. R. Co. [U. R. 2028].....	730
Rankin & Co. v. M. & St. L. R. R. Co. [U. R. 1937].....	724
Rath Packing Co. v. I. C. R. R. Co. [U. R. 2020].....	729
Rayner & Co. v. A. O. L. R. R. Co. [U. R. 1898].....	721
Reed Foundry & Machine Co. v. G. R. & I. Ry. Co. [U. R. 1891].....	720
Reeves Coal Co. v.:	
A. A. R. R. Co. [U. R. 2000].....	728
C. G. W. R. R. Co. [U. R. 2064].....	733
C., M. & St. P. Ry. Co. [U. R. 2052, 2053].....	732
P. M. R. R. Co. [U. R. 2081].....	734
Retail Merchants Asso. of Montana v. N. P. Ry. Co. [U. R. 1968].....	726
Reymer & Bros. v. C. & N. W. Ry. Co. [U. R. 2056].....	732
Rice & Lockwood Lumber Co., Nat'l Wholesale Lumber Dealers' Asso. for v.	
S. Ry. Co. [U. R. 1854].....	718
Rockford Paper Box Board Co. v. I. C. R. R. Co. [U. R. 2035].....	731
Roesler & Hasselacher Chemical Co. v. C. & O. Ry. Co. [U. R. 1824].....	715
Rose & Wobbe v. C., C., C. & St. L. Ry. Co. [U. R. 2057].....	732
Rosenbaum & Son v. C., B. & Q. R. R. Co. [U. R. 1946].....	724
Royster Guano Co. v. S. A. L. Ry. [U. R. 1949].....	725
St. Joseph & G. I. Ry. Co., Zelnicker Supply Co. v. [U. R. 2041].....	731
St. Louis & S. F. R. R. Co.:	
Cameron & Co. (Inc.) v. [U. R. 1830].....	716
Chapman & Dewey Lumber Co. v. [U. R. 1874].....	719

750 TABLE OF MEMORANDUM AND UNREPORTED OPINIONS.

St. Louis & S. F. R. R. Co.—Continued.	Page.
International Purchasing Co. v. [U. R. 1939].....	724
Ireland & Rollings v. [U. R. 1964].....	726
Koshkonong-Brandsville Fruit Shippers Asso. v. [U. R. 1862].....	718
Mascari Bros. v. [U. R. 1972].....	726
Swift & Co. v. [U. R. 1868].....	719
Waterman Lumber & Supply Co. v. [U. R. 1935].....	724
St. Louis, B. & M. Ry. Co., South Texas Grain Co. v. [U. R. 2073].....	733
St. Louis, I. M. & S. Ry. Co.:	
Davis v. [U. R. 1864].....	718
Powell Grain Co. v. [U. R. 1876].....	719
Stevens Grocer Co. v. [U. R. 1840].....	716
Verhalen & Co. v. [U. R. 2072].....	733
Woods Lumber Co. v. [U. R. 2009].....	729
St. Louis S. W. Ry. Co. Powell-Meyers Lumber Co. v. [U. R. 1996].....	728
St. Louis S. W. Ry. Co. of Texas, Southport Mill (Ltd.) v. [U. R. 2043].....	731
San Pedro, L. A. & S. L. R. R. Co., Lusby (et al.) v. [U. R. 1922].....	723
Scattergood & Co. v.:	
L. S. & M. S. Ry. Co. [U. R. 2040].....	731
N. Y., O. & W. Ry. Co. [U. R. 1832].....	716
Schloss & Kahn v.:	
C. of G. Ry. Co. [U. R. 2042].....	731
L. & N. R. R. Co. [U. R. 1994].....	728
Scotch Lumber Co. v. M. C. R. R. Co. [U. R. 2054].....	732
Seaboard A. L. Ry.:	
Fish & Co. v. (7720).....	713
Phosphate Mining Co. v. [U. R. 1908].....	722
Royster Guano Co. v. [U. R. 1949].....	725
Seagrave Co. v. H. V. Ry. Co. (7842).....	713
Sechrist Mfg. Co. v. O.-W. R. R. & N. Co. (4561).....	711
Shettler Co. v. A., T. & S. F. Ry. Co. [U. R. 1 2'].....	723
Shields-Metzler Grocery Co. v. B. S. P. Co. [U. R.	724
Sifritt v. P. M. R. R. Co. [U. R. 1913].....	722
Sizer & Co. v. A. C. L. R. R. Co. [U. R. 1975].....	726
Slane Glass Co. v. V. & S. W. Ry. Co. [U. R. 2063].....	733
Sloan v. S. Ry. Co. [U. R. 1932].....	723
Small & Co. v. I. C. R. R. Co. [U. R. 2045].....	731
Smith & Son v. C. & N. W. Ry. Co. [U. R. 1962].....	726
Smith Bros. Co. v. S. P. Co. [U. R. 1922].....	723
Sodeman Heat & Power Co. v. I. C. R. R. Co. [U. R. 1.....	726
South Texas Grain Co. v. St. L., B. & M. Ry. Co.	733
Southern P. Co.:	
Dunbar-Hansen Co. v. [U. R. 1865].....	718
Ennis, Brown Co. v. [U. R. 2078].....	734
Lindsay-Walker Co. v. [U. R. 1828].....	716
Lusby (et al.) v. [U. R. 1922].....	723
Pioneer Fruit Co. v. [U. R. 1998].....	728
Producers Fruit Co. v. [U. R. 1891].....	720
Walker Mfg. Co. v. (6385).....	711
Wier & Jordan v. [U. R. 1889].....	720
Southern Ry. Co.:	
Charleston Mining & Mfg. Co. v. [U. R. 1944].....	724
Chattanooga Sewer Pipe & Fire Brick Co. v. [U. R. 1839].....	724
Columbia Ry., Gas & Electric Co. v. [U. R. 1920].....	724

TABLE OF MEMORANDUM AND UNREPORTED OPINIONS. 751

Southern Ry. Co.—Continued.

	Page.
Gilbert Grocery Co. v. [U. R. 1851].....	717
Hampton Grocery Co. v. [U. R. 1851].....	717
Hood Brick Co. v. [U. R. 1973].....	726
Indian Refining Co. v. [U. R. 1983].....	727
Kerrihard Co. v. [U. R. 1855].....	718
Merchants' Tobacco Mfg. Co. v. [U. R. 2080].....	734
Moss Tie Co. v. [U. R. 1942].....	724
Mullins Lumber Co. v. [U. R. 1908].....	722
National Wholesale Lumber Dealers' Asso., for Rice & Lockwood Lumber Co. v. [U. R. 1854].....	718
Sloan v. [U. R. 1932].....	723
Southern Wisconsin Sand & Gravel Co. v. O. & N. W. Ry. Co. [U. R. 2093].....	735
Southport Mill (Ltd.) v. St. L. S. W. Ry. Co. of Texas [U. R. 2043].....	731
Southwestern Milling Co. v. M. P. Ry. Co. [U. R. 1867].....	719
Standard Milling Co. v. I. & G. N. Ry. Co. [U. R. 1928].....	723
Standard Oil Co. v. C. & N. W. Ry. Co. (7517).....	712
Standard Oil Co. of New York v. P. R. R. Co. [U. R. 2044].....	731
Stevens Grocer Co. v. St. L., I. M. & S. Ry. Co. [U. R. 1840].....	716
Stewartstown R. R. Co., Brown Mercantile Co. v. [U. R. 1936].....	724
Stuttgart Rice Mill Co. v. T. & N. O. R. R. Co. [U. R. 2039].....	731
Swift & Co. v.:	
M. P. Ry. Co. [U. R. 1868].....	719
P. R. R. Co. [U. R. 1915].....	722
T. & P. Ry. Co. [U. R. 2094].....	735
Switching Charges at Berlin, N. H. [U. R. 2066].....	733
Texas & N. O. R. R. Co., Stuttgart Rice Mill Co. v. [U. R. 2039].....	731
Texas & P. Ry. Co.:	
Lord & Bushnell Co. v. [U. R. 2021].....	730
Swift & Co. v. [U. R. 2094].....	735
Wattam & Son v. [U. R. 2095].....	735
Texas Unit Construction Co. v. N. O., T. & M. R. R. Co. [U. R. 2003].....	728
Thacher Medicine Co. v. C., N. O. & T. P. Ry. Co. [U. R. 1856].....	718
Timpson Brokerage Co. v. A. E. R. R. Co. [U. R. 1863].....	718
Toledo, St. L. & W. R. R. Co., National Supply Co. of Kansas v. [U. R. 1982].....	727
Tootle-Campbell Dry Goods Co. v. M. P. Ry. Co. [U. R. 1933].....	723
Topeka Packing Co. v. A., T. & S. F. Ry. Co. [U. R. 1912].....	722
Tremont & G. Ry. Co., Collins v. [U. R. 1914].....	722
Tri-State Auto & Supply Co. v. S. P., L. A. & S. L. R. R. Co. [U. R. 1922]..	723
Tyler Coal & Coke Co. v. P. R. R. Co. [U. R. 1986].....	727
Tyler Produce Co. v. I. & G. N. Ry. Co. [U. R. 1951].....	725
Union P. R. R. Co.:	
Beebe & Ryan Furniture Co. v. [U. R. 1976].....	726
Byers Bros. & Co. v. (7172).....	712
Greater Des Moines Committee v. (4594).....	711
Lexington Mill and Elevator Co. v. (6973).....	712
Radinsky v. [U. R. 2022].....	730
Union R. R. Co., Monongahela River Consolidated Coal & Coke Co. v. (6789)..	712
Union Tanning Co. v. L. & N. R. R. Co. [U. R. 2038].....	731
United States of America v. A., T. & S. F. Ry. Co. (7290).....	712
United States Gypsum Co. v. C. & S. Ry. Co. [U. R. 1909].....	722
Utah Junk Co. v. C., P. & St. L. R. R. Co. [U. R. 1910].....	722
Vaughan's Seed Store v. C., M. & St. P. Ry. Co. [U. R. 1950].....	725
Verhalen & Co. v. St. L., I. M. & S. Ry. Co. [U. R. 2072].....	733

	Page.
Virginia & S. W. Ry. Co., Slane Glass Co. v. [U. R. 2063].....	733
Virginia-Carolina Chemical Co. v.:	
A. C. L. R. R. Co. [U. R. 1849].....	717
I. C. R. R. Co. [U. R. 1929].....	723
L. & N. R. R. Co. [U. R. 1948].....	724
Wabash R. R. Co.:	
Buffalo Specialty Co. v. [U. R. 1852].....	717
Knight Mercantile Co. v. [U. R. 1989].....	727
Lucke & Co. v. [U. R. 2070].....	733
Walker Mfg. Co. v. S. P. Co. (6385).....	711
Walrath & Sherwood Lumber Co. v.:	
O., M. & St. P. Ry. Co. [U. R. 1992].....	727
C., R. I. & P. Ry. Co. [U. R. 1825].....	715
Warner Iron Co. v. L. & N. R. R. Co. [U. R. 2006].....	728
Waterbury Felt Co. v. B. & A. R. R. Co. [U. R. 1963].....	728
Waterman Lumber & Supply Co. v. St. L. & S. F. R. R. Co. [U. R. 1935].....	724
Wattam & Son v. T. & P. Ry. Co. [U. R. 2095].....	735
Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co. [U. R. 2092].....	735
Weakley & Worman Co. v. C., H. & D. Ry. Co. [U. R. 1899].....	721
Webb Granite & Construction Co. v. B. & M. R. R. (7967).....	713
Weis & Lesh Mfg. Co. v. M. & O. R. R. Co. [U. R. 1966].....	728
Welsbach Co. v. A. C. R. R. Co. [U. R. 2098].....	735
Western Clock Co. v. O., B. & Q. R. R. Co. [U. R. 2068].....	733
Western P. Ry. Co., Ennis, Brown Co. v. [U. R. 2078].....	734
Weyl Zuckerman & Co. v. A., T. & S. F. Ry. Co. [U. R. 1921].....	722
Wheeler & Motter Mercantile Co. v. M. P. Ry. Co. [U. R. 1933].....	723
Wichita Business Asso. v. M. V. R. R. Co. [U. R. 1999].....	728
Wier & Jordan v. S. P. Co. [U. R. 1889].....	720
Wilcox v. F. E. C. Ry. Co. [U. R. 1834].....	716
Wilcox Co. v. O. & N. W. Ry. Co. [U. R. 2093].....	735
Wilkes & Co. v. A. G. S. R. R. Co. [U. R. 1969].....	728
Williams Co. v. M. C. R. R. Co. [U. R. 2001].....	728
Williams Co. v. P. Co. [U. R. 2036].....	731
Williamsburg Lumber Co. v. G. & S. I. R. R. Co. [U. R. 1996].....	728
Wimsatt v. G., S. & F. Ry. Co. [U. R. 1821].....	715
Woods Lumber Co. v. St. L., I. M. & S. Ry. Co. [U. R. 2009].....	729
Yazoo & M. V. R. R. Co.:	
Darnell v. [U. R. 1947].....	724
Hoffman & Co. v. (7834).....	713
Zelnicker Supply Co. v.:	
C., R. I. & P. Ry. Co. [U. R. 1903].....	721
P. R. R. Co. (7600).....	712
St. J. & G. I. Ry. Co. [U. R. 2041].....	731
Zenith Milling Co. v. C. & A. R. R. Co. [U. R. 1867].....	719
Zimmerman v. G. N. Ry. Co. [U. R. 1907].....	721

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

3682. **ANHEUSER-BUSCH BREWING ASSO. v. WABASH R. R. Co. ET AL.** May 24, 1915. Reparation for \$18.38 on shipments of empty beer packages from La Junta, Colo., to St. Louis, Mo., on account of unreasonable rates.

5757. **LINDSAY-WALKER Co. v. S. P. Co. ET AL.** 5757 (Sub-No. 1). **LINDSAY-WALKER Co. ET AL. v. C., B. & Q. R. R. Co. ET AL.** May 24, 1915. Reparation for \$3,739.72 on shipments of citrus fruits from California points to Sheridan, Wyo., and Billings, Mont., on account of unreasonable rates.

6563. **RUMSEY & Co. v. C. & N. W. Ry. Co. ET AL.** May 24, 1915. Reparation for \$8 on shipment of wheat from Chicago, Ill., to Wauseon, Ohio, on account of excessive minimum weight.

6653. **SCHRAGER COAL Co. v. D., L. & W. R. R. Co. ET AL.** May 24, 1915. Reparation for \$6,034.48 on shipments of anthracite coal from Schrager's washery near Taylor, Pa., to tidewater points in New Jersey, on account of unreasonable rates.

3629. **UNITED STATES LEATHER Co. ET AL. v. S. Ry. Co. ET AL.** May 29, 1915. Reparation for \$383.50 to Hans Rees' Sons (Inc.), on shipments of leather from Asheville, N. C., to various points, on account of unreasonable rates.

4921. **BERRUM v. I. H. B. R. R. Co. ET AL.** May 29, 1915. Reparation for \$164 on account of unreasonable rates and demurrage charges collected on shipment of asphalt shingles moving from Argo, Ill., to Logan, Utah.

6577. **PARKINSON COKE & COAL Co. v. N. Y. C. & H. R. R. R. Co. ET AL.** May 29, 1915. Reparation for \$363.70 on interstate shipments of coke from Geneva, N. Y., to Brooklyn, N. Y., on account of unreasonable rates.

6701. **MOSS TIE Co. v. S. Ry. Co.** May 29, 1915. Reparation for \$343.75 on shipments of railroad ties from Evansville, Ind., to Chicago, Ill., on account of unreasonable rates.

5981. **BERRY LUMBER & STAVE Co. v. L. & N. R. R. Co. ET AL.** 5981 (Sub-No. 1). **SAME v. M. & O. R. R. Co. ET AL.** June 7, 1915. Reparation for \$693.89 on shipments of logs from Searles, Brookwood, and Brent, Ala., to Chattanooga, Tenn., on account of unreasonable rates.

6658. **VIRGINIA-CAROLINA CHEMICAL Co. v. A. C. L. R. R. Co.** June 7, 1915. Reparation for \$128.66 on shipments of sulphuric acid from Charleston, S. C., to Savannah, Ga., on account of unreasonable rates.

6784. **CHAPMAN & DEWEY LUMBER Co. v. St. L. & S. F. R. R. Co. ET AL.** June 7, 1915. Reparation for \$1,376.83 on interstate shipments of gum lumber from Shaw, Ark., to Marked Tree, Ark., on account of unreasonable rates.

4902. **WESTERN FRUIT JOBBERS ASSO. v. C., R. I. & P. Ry. Co. ET AL.** June 29, 1915. Reparation for \$2,651.97 on shipments of grapes from Chicago, Ill., East St. Louis, Ill., and St. Louis, Mo., to points in Kansas, on account of unreasonable rates.

6764 (Sub-No. 1). **CUDAHY PACKING Co. v. U. P. R. R. Co. ET AL.** June 29, 1915. Reparation for \$1,155.60 on shipments of packing-house products in mixed carloads with fresh meat from South Omaha, Nebr., to Salt Lake City, Utah, on account of unreasonable rates.

3629. UNITED STATES LEATHER CO. ET AL. v. S. RY. CO. ET AL. June 30, 1915. Reparation for \$7.40 to Smoot & Sons Co. on shipment of leather from North Wilkesboro, N. C., to Alexandria, Va., on account of unreasonable rates.

6420. BRUER BROTHERS LUMBER CO. v. C., M. & ST. P. RY. CO. July 3, 1915. Reparation for \$1,998.37, on account of improper switching charges on lumber at Minneapolis, Minn.

6760. CHARLESTON MINING & MANUFACTURING CO. v. S. RY. CO. July 3, 1915. Reparation for \$410.79 on shipments of phosphate rock from Goodrich, S. C., to Winston-Salem, N. C., and Augusta, Ga., on account of excessive minimum weights.

6703. MCCLINTICK & CO. v. A. A. R. R. CO. ET AL. July 17, 1915. Reparation for \$26.40 on shipment of potatoes from Beulah, Mich., to Huntingburg, Ind., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$19,505.44.

34 L. Q. Q.

TABLE OF COMMODITIES.

- Acetate of lead. *See* Lead.
- Acid, sulphuric. Goldfield, Nev., from San Francisco, Cal., 360.
- Apples. Indianapolis, Ind. Storage in transit, 267.
- Apples. Montrose and Delta counties, Colo., to points east, 400.
- Ashes. Transportation and disposal charges of at Pittsburgh, Pa., and other cities, 337.
- Asphalt. Chicago, Ill., to Des Moines, Iowa., 281.
- Bagging. Montrose and other Colorado points from St. Louis, Mo., 393.
- Bags, burlap or gunny. Montrose and other Colorado points from St. Louis, and Los Angeles and San Francisco, 393, 409.
- Barley. Georgian Bay to Middletown, Conn., 39.
- Beans. New Orleans, La., to Chicago, Ill., 32.
- Beer. Missouri River territory to Pacific and north coast territories, 140.
- Beets. New Orleans, La., to Chicago, Ill., 32.
- Blankets. Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Blankets. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Bolts, staves. Alexandria and other Louisiana points. Milling-in-transit rates, 169.
- Borax. Goldfield, Nev., from Alameda, Cal., 360.
- Bottles. Chicago, Ill., to Des Moines, Iowa, 281.
- Bran. Inman, Kans., to southwestern Missouri, 197.
- Brickbats. Transportation and disposal charges of at Pittsburgh, Pa., and other cities, 337.
- Butter. Missouri River territory to Pacific coast and north Pacific coast territories, 140.
- Cabbage. New Orleans, La., to Chicago, Ill., 32.
- Canned goods. Montrose and other Colorado points from St. Louis and Los Angeles and San Francisco, 393, 409.
- Canned goods. Pacific coast terminals from Chicago, Pittsburgh, and New York, 13.
- Carriers, feed and litter. Classification of in western classification territory, 383.
- Cars, iron mining. Salt Lake City to Goldfield, Nev., 360.
- Celery. New Orleans, La., to Chicago, Ill., 32.
- Cement. Arkansas from interstate points, 124.
- Cement. Chicago, Ill., to Des Moines, Iowa, 281.
- Cheese. Wisconsin to Arkansas, 644.
- Class and commodity rates. Coffeyville and Independence, Kans., from St. Louis, Mo., 231.
- Class and commodity rates. Danville, Va., from and to points in the east, west, and south, 430.
- Class and commodity rates. Des Moines, Iowa, from and to Mississippi River, originating at or destined to points east of the Illinois-Indiana state line, 281.
- Class and commodity rates. Los Angeles and San Francisco to Montrose, Delta, Olathe, Hotchkiss, and Paonia, Colo., 409.
- Class and commodity rates. Missouri River and points east of to Montrose, Olathe, Delta, Hotchkiss, and Paonia, Colo., 393.
- Class and commodity rates. New Mexico from Kansas City, St. Louis, and Chicago, 292.

- Class and commodity rates.** Shreveport, La., to and from eastern Texas, 472.
- Class and commodity rates.** Spartanburg, S. C., from eastern points, Buffalo-Pittsburgh and C. F. A. territories, Ohio and Mississippi river crossings, and Virginia cities, 484.
- Class rates.** Interior Iowa cities from and to points east of the Indiana-Illinois state line, 278.
- Class rates.** Iowa to Kansas, 379.
- Clothing.** Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Coal.** Danville, Va., from Pocahontas and other West Virginia fields, 430.
- Coal.** Roosevelt, Tenn., to Dell Rapids, S. Dak., reconsigned to Sioux Falls, S. Dak., 122.
- Coal.** Sullivan-Linton group, Ind., to Chicago, Ill., 221.
- Coal, bituminous.** Belleville district, Ill., to Omaha, Nebr., and group points, 623.
- Coal, bituminous.** La Follette, Tenn., to Vermilion, S. Dak., reconsigned at Ludington, Mich., to Ghent, Minn., 621.
- Coal, bituminous.** San Toy, Ohio, and other points in the Crooksville district, to Chicago, Ill., and Indiana, Michigan, and lake ports, 93.
- Coal, bituminous slack.** Martins Creek, Pa., from West Virginia and Pennsylvania mines, 414.
- Coffee, green.** Pacific coast terminals from New York, Chicago, and other eastern points, 13.
- Coke.** Durham and Chickamauga, Ga., to Pacific coast terminals, 10.
- Commodity rates.** Goldfield, Nev., from various points of origin, 360.
- Commodity rates.** Pacific coast terminals and intermediate points from Missouri River and points east of, 13.
- Commodity rates.** Willamette Valley from eastern points via Portland and Sacramento, 319.
- Corduroy.** North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Corn.** Georgian Bay to Middletown, Conn., 39.
- Corn.** Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., 381.
- Corn.** St. Louis, Mo., from interior Missouri points, destined to C. F. A., trunk line, southeastern, southwestern, and Mississippi Valley territories, 441.
- Cornstarch.** Classification and rules in western trunk line territory, 554.
- Cotton.** Alexandria, La. Concentration and compression charges, 163.
- Cotton.** Southern California and Arizona to Galveston, New Orleans, and St. Louis, 248.
- Cotton piece goods.** Montrose and other Colorado points from St. Louis, Mo., 393.
- Cotton piece goods.** North Adams and other Massachusetts points to New York and Brooklyn, N. Y., 41.
- Cotton, Sea-Island seed.** Florida to Blackshear, Ga., 21.
- Cotton, uncompressed.** Shreveport, La., from eastern Texas, 472.
- Cottonwood.** Southwestern points to Ohio River crossings, 652.
- Crash.** North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Cucumbers.** New Orleans, La., to Chicago, Ill., 32.
- Cyanide of potassium.** *See* Potassium.
- Distillate, engine.** Arizona from California, Kansas, and Texas, 586.
- Drugs.** Buffalo, N. Y., to Eau Claire, Wis., 106.
- Eggs.** Missouri River territory to Pacific coast and north Pacific coast territories, 140.
- Elbows, stovepipe.** Classification and rules in western trunk line territory, 554.
- Explosives, high.** California to Goldfield and Tonopah, Nev., 360.
- Feed, mixed.** Memphis, Tenn. Reshipping rates on, 315.
- Fiber, plastering.** Classification and rules in western trunk line territory, 554.

- Fish, dried.** Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Fish, pickled.** Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Fish, salted.** Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Fish, smoked.** Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Flaxseed.** Milwaukee, Wis., from Iowa, Minnesota, and South Dakota, 581.
- Flour.** Hillsdale and Litchfield, Mich., to New York, N. Y., 481.
- Flour.** Inman, Kans., to southwestern Missouri, 197.
- Flue dust.** Transportation and disposal charges of, at Pittsburgh, Pa., and other cities, 337.
- Fruit, deciduous.** Montrose and Delta counties, Colo., to points east, 400.
- Furniture.** Grand Rapids, Mich., and Rockford, Ill., to Pacific coast terminals, 262.
- Furniture, bedroom.** Montrose and other Colorado points from St. Louis, Mo., 393.
- Grain and products.** Kansas City, Mo.-Kans., to Norfolk and Newport News, Va., 67.
- Grain and products.** Trebein and Leesburg, Ohio, to Kentucky, West Virginia, and Virginia, 135.
- Grain.** Car fitting for shipments of, from Illinois, Iowa, Minnesota, Nebraska, Kansas, and North and South Dakota, 60.
- Grain.** El Paso, Tex., to Fairbank and Tucson, Ariz., 30.
- Grain.** Georgian Bay to Middletown, Conn., 39.
- Grain.** Kansas City, Mo., and other points. Elevation allowances, 442.
- Grain.** Memphis, Tenn. Reshipping rates on, 315.
- Grain.** Milwaukee, Wis., from Iowa, Minnesota, and South Dakota, 581.
- Grain.** St. Louis, Mo., from interior Missouri points destined to C. F. A., trunk line, southeastern, southwestern, and Mississippi Valley territories, 341.
- Grain, coarse.** Iowa to Kansas City, Mo., 208.
- Grain products.** Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., 381.
- Grapes, in baskets.** Classification of, in southern classification territory, 58.
- Gravel.** Wisconsin to Chicago, Ill., 467.
- Gypsum products.** Grand Rapids, Mich., to northern Illinois and southern Wisconsin, 202.
- Hair, plastering.** Classification and rules in western trunk line territory, 554.
- Handles, broom.** Chicago, Ill., to Des Moines, Iowa, 281.
- Hay.** Chicago, Ill. Switching, 150.
- Hay.** Roswell and other New Mexico points to Fort Worth and other Texas points, 292.
- Hods, coal.** Classification and rules in western trunk line territory, 554.
- Hogs.** Salt Lake City, Utah, to California, 627.
- Horses.** Schenectady, N. Y. Feeding, watering, and resting charges, 1.
- Hosiery.** North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Implements, agricultural.** Canton, Ohio, to Kentucky, Tennessee, and Mississippi, 90.
- Implements, agricultural.** Chicago, Ill., to Des Moines, Iowa, 281.
- Implements, agricultural.** Montrose and other Colorado points from Missouri River and points east of, 393.
- Iron articles.** Chicago, Ill., to Des Moines, Iowa, 281.
- Iron articles.** Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Iron, bar.** Goldfield, Nev., from San Francisco, Cal., 360.
- Iron, scrap.** Chicago Heights, Ill. Demurrage charges, 75.
- Iron, scrap.** Classification and rules in western trunk line territory, 554.

- Iron, stovepipe. Classification and rules in western trunk line territory, 554.
- Knit goods. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Lard. Missouri River territory to Pacific coast and north Pacific coast territories, 140.
- Lead, acetate of. Goldfield, Nev., from San Francisco and San Diego, Cal., 360.
- Lead, pig. Goldfield, Nev., from Selby, Cal., 360.
- Leather, glove. Chicago, Ill., to Des Moines, Iowa, 281.
- Leather, harness and kip. Montrose and other Colorado points from San Francisco and Los Angeles, Cal., 409.
- Lettuce. New Orleans, La., to Chicago, Ill., 32.
- Lime. Arkansas from interstate points, 124.
- Linters, cotton. Alexandria, La. Compression and concentration charges, 163.
- Litharge, dry. Goldfield, Nev., from St. Louis, Mo., 360.
- Live stock. Kansas City, Mo. Weighing charges, 423.
- Logs. Stuttgart and other Arkansas points to Memphis, Tenn., 216.
- Logs. Alexandria and other Louisiana points. Milling-in-transit rates, 169.
- Logs. Alexandria, La. Milling in transit, 630.
- Lumber, car fitting. Meredith and Walling Spur, Fla., to Jacksonville and Fernandina, Fla., 214.
- Lumber. Las Cruces, N. Mex., from Louisiana and Texas, 388.
- Lumber. Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Lumber. Newport, Tenn., and Asheville, N. C., to Virginia cities, 448.
- Lumber. Pecos Valley of New Mexico from Texas, Louisiana, and Arkansas, 292.
- Lumber. Pinners Point, Va. Demurrage on shipments from Lamar, S. C., destined to Portsmouth, Va., 469.
- Lumber. South Pittsburg, Tenn., to Ohio and Mississippi River crossings, 333.
- Lumber. Southwest, Mississippi Valley, and the Southeast to St. Louis, East St. Louis, Thebes, and Cairo, Ill., Memphis, and Ohio River crossings, 652.
- Lumber. Spokane, Wash., to Butte and other Montana points, 146.
- Lumber, cherry. Chicago, Ill., to Des Moines, Iowa, 281.
- Lumber, gum. Southwestern points to Ohio River crossings and other points, 652.
- Lumber, hardwood. Arkansas, Louisiana, and other points to Memphis, St. Louis, and other points, 708.
- Lumber, hardwood. Huttig, Ark. Through routes and joint rates, 116.
- Lumber products. Las Cruces, N. Mex., from Louisiana and Texas, 388.
- Lumber products. Southwest, Mississippi Valley, and the Southeast to St. Louis East St. Louis, Thebes, Cairo, Memphis, and Ohio River crossings, 652.
- Lumber, yellow-pine. Sioux City, Iowa, from the Southwest, 102.
- Lye, concentrated. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Machinery and parts. Goldfield, Nev., from Pueblo, Colo., 360.
- Machinery, mining. Goldfield, Nev., from Akron and South Akron, Ohio, 360.
- Marble. St. Paul, Minn., from Peoria and Chicago, Ill., 390.
- Meats, dry salted, sweet pickled. Missouri River territory to Pacific and north Pacific coast territories, 140.
- Molasses, blackstrap. New Orleans and Mobile to St. Louis and East St. Louis and points beyond, 253.
- Motor cycles. Armory, Mass., to Portland and Seattle, Wash., 120.
- Nails. Montrose and other Colorado points, from St. Louis, Mo., 393.
- Nails. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Oats. Georgian Bay to Middletown, Conn., 39.
- Oil, coconut. New Orleans, La., to Kansas City, Mo., 634.
- Oil, copra. New Orleans, La., to Kansas City, Mo., 634.

- Oil, creosote. Chicago, Ill., to Des Moines, Iowa, 281.
- Oil, crude. Titusville and Warren, Pa., to various destinations, 179.
- Oil, fuel and refined. Arizona from California, Kansas, and Texas, 586.
- Oil, fuel. Port Aransas, Tex. Wharfage charges, 330.
- Oil, palm and palm-kernel. New Orleans, La., to Kansas City, Mo., 634.
- Oil, petroleum. Caney, Kans., to Kiowa, Kans., via Woodward, Okla. Through billing, 271.
- Onions. Montrose and Delta Counties, Colo., to points east, 400.
- Paints, mixed. Chicago, Ill., to Des Moines, Iowa, 281.
- Paper. Chicago, Ill., to Des Moines, Iowa, 281.
- Paper. Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Paper. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Paper articles. Chicago, Ill., to Des Moines, Iowa, 281.
- Paper, news. Montrose and other Colorado points from St. Louis, Mo., 393.
- Paper, roofing and building. St. Louis, East St. Louis, and Kansas City to Muskogee, Tulsa, and McAlester, Okla., 3.
- Paper, wrapping. Montrose and other Colorado points from St. Louis, Mo., 393.
- Papers, cigarette. Classification and rules in western trunk line territory, 554.
- Pedestal, wooden. Buffalo, N. Y., to Eau Claire, Wis., 106.
- Petroleum, refined. Montrose and other Colorado points from San Francisco and Los Angeles, 409.
- Pipe, cast-iron. Charlotte, N. C., and Rockhill, S. C., from Anniston, Ala., and East Radford and Lynchburg, Va., 128.
- Pipe, iron, steel, and stove. Classification and rules in western trunk line territory, 554.
- Pipe, steel or wrought. Montrose and other Colorado points from St. Louis, Mo., 393.
- Pitch. Classification and rules in western trunk line territory, 554.
- Plaster. Arkansas from interstate points, 124.
- Plaster. Grand Rapids, Mich., to northern Illinois and southern Wisconsin, 202.
- Plates, lead stereotype. Classification of, in southern and official classification territories, 326.
- Potassium, cyanide of. Goldfield, Tonopah, and Millers, Nev., from San Francisco and San Diego, Cal., and Perth Amboy, N. J., 360.
- Potatoes. Minnesota and Wisconsin to various destinations. Protection of, from cold weather, 154.
- Potatoes. Montrose and Delta Counties, Colo., to points east, 400.
- Potatoes. New Orleans, La., to Chicago, Ill., 32.
- Potatoes. Rental charges for insulated cars for shipments of, from Chicago, Kansas City, and St. Paul and Minneapolis and other points in Minnesota and Wisconsin, 255.
- Poultry. Missouri River territory to Pacific coast and north Pacific coast territories, 140.
- Powder, baking. Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Pulp, imported wood. Boston, Mass., to New England points, 323.
- Refuse. Transportation and disposal charges at Pittsburgh, Pa., and other cities, 337.
- Rice. Checking and loading charges at points in Louisiana, 511.
- Robes. Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Roofing, metal asbestos. Goldfield, Nev., from Beaver Falls, Pa., 360.
- Salt. Classification and rules in western trunk line territory, 554.
- Salt. La Grange, Ga. Storage charges, 638.
- Sand. Wisconsin to Chicago, Ill., 467.

- Sand, refuse molding. Transportation and disposal charges at Pittsburgh, Pa., and other cities, 337.
- Seeds. Kansas City, Mo., and other points. Elevation allowances, 442.
- Shingles, cedar. Iowa, from Oregon, Washington, Idaho, and Montana, 111.
- Shooks, box. Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Shooks, box. Williams, Ariz., to Clifton, Ariz., 257.
- Shorts. Inman, Kans., to southwestern Missouri, 197.
- Sirup. California to Phoenix and Prescott and other Arizona points, 158.
- Slag. Transportation and disposal charges at Pittsburgh, Pa., and other cities, 337.
- Soap. Montrose and other Colorado points, from St. Louis, Los Angeles, and San Francisco, 393, 409.
- Soap. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Spinach. New Orleans, La., to Chicago, Ill., 32.
- Starch. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Starch, corn. Classification and rules in western trunk line territory, 554.
- Staves, rough. Alexandria and other Louisiana points. Milling-in-transit rates, 169.
- Steel articles. Chicago, Ill., to Des Moines, Iowa, 281.
- Steel articles. Pacific coast terminals from New York, Chicago, and Pittsburgh, 13.
- Steel, bar. Goldfield, Nev., from San Francisco, Cal., 360.
- Stereotype plates, lead. *See* Plates.
- Stone. St. Paul, Minn., from Chicago and Peoria, Ill., 390.
- Sugar. California to Phoenix and Prescott and other Arizona points, 158.
- Sugar. Goldfield, Nev., from Crockett, Cal., 360.
- Sugar. Memphis, Tenn., to Charleston, S. C., 45.
- Sugar. Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Sugar. New Mexico, from San Francisco and Los Angeles, 292.
- Tar. Classification and rules in western trunk line territory, 554.
- Tea. Montrose and other Colorado points, from San Francisco and Los Angeles, 409.
- Tobacco, smoking. Classification and rules in western trunk line territory, 554.
- Toweling. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Towels. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Underwear. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Vegetables. Montrose and Delta counties, Colo., to points east, 400.
- Vegetables. New Orleans, La., to Chicago, Cairo, Louisville, Kansas City, and Pittsburgh-Buffalo territory, 32.
- Waste materials. Pittsburgh, Pa. Charges for transportation and disposal of, 337.
- Wheat. Georgian Bay ports to Middletown, Conn., 39.
- Wheat. Minneapolis, Minn., to New York, N. Y., 481.
- Wheat. Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans, 381.
- Wheat. Perryville, Ohio, to Johnson City, Tenn., 25.
- Wheat. St. Louis, Mo., from interior Missouri points, destined to C. F. A., trunk line, southeastern, southwestern, and Mississippi Valley territories, 341.
- Wire. Pacific coast terminals, from New York, Chicago, and Pittsburgh, 13.
- Wood, pulp. Minnesota to Wisconsin and Michigan, 500.
- Woolen piece goods. North Adams and other Massachusetts points to New York and Brooklyn, N. Y., 41.
- Yarn. North Adams, Mass., to New York and Brooklyn, N. Y., 41.
- Zinc, sheet. Tonopah, Nev., from Peru, Ill., 360.

TABLE OF LOCALITIES.

- Aberdeen, Wash., from eastern points. Commodity rates, 13.
- Adams, Mass., to New York and Brooklyn, N. Y. Cotton and woolen piece goods, 41.
- Akron, Ohio, to Goldfield, Nev. Mining machinery, 360.
- Alabama to Charlotte, N. C., and Rock Hill, S. C. Cast-iron pipe, 128.
- Alameda, Cal., to Goldfield, Nev. Borax, 360.
- Alaska from and to California ports. Operation of oil steamers, 77.
- Albuquerque, N. Mex., from Kansas City, St. Louis, and Chicago. Class and commodity rates, 292.
- Alexandria, La. Compression and concentration charges on cotton and cotton linters, 163.
- Alexandria, La. Milling-in-transit rates on logs, staves, and stave bolts, 169.
- Alexandria, La., from other Louisiana points, reconsigned to New Orleans for export. Logs, 630.
- Alton, Ill., to Des Moines, Iowa. Bottles, 281.
- Anniston, Ala., to Charlotte, N. C., and Rock Hill, S. C. Cast-iron pipe, 128.
- Arizona from California, Kansas, and Texas. Fuel oil, refined oil, and engine distillate, 586.
- Arizona to Galveston, New Orleans, and St. Louis. Cotton, 248.
- Arizona from San Francisco and Los Angeles, Cal. Sugar and sirup, 158.
- Arkansas from Memphis, Tenn., and other points. Lime, cement, and plaster, 124.
- Arkansas to Memphis, Tenn. Logs, 216.
- Arkansas to points in the Pecos Valley. Lumber, 292.
- Arkansas to St. Louis, Mo., and Ohio River crossings. Lumber, 652.
- Arkansas to St. Louis, Memphis, and other points. Hardwood lumber, 708.
- Arkansas to Sioux City, Iowa. Yellow-pine lumber, 102.
- Arkansas from Wisconsin. Cheese, 644.
- Armory, Mass., to Portland and Seattle, Wash. Motor cycles, 120.
- Asheville, N. C., from Memphis, Tenn. Sugar, 45.
- Asheville, N. C., to Virginia cities. Lumber, 448.
- Astoria, Oreg., from eastern points. Commodity rates, 13.
- Atlantic seaboard territory from Montrose and Delta Counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Atlantic ports to Spartanburg, S. C. Class and commodity rates, 484.
- Bakersfield district, Cal., to Creamery and Gilbert, Ariz. Fuel oil, 586.
- Baltimore, Md., from Montrose and Delta Counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Baltimore, Md., to Spartanburg, S. C. Class and commodity rates, 484.
- Barbreck and other Louisiana points to Alexandria, La., reconsigned to New Orleans for export. Logs, 630.
- Beaver Falls, Pa., to Goldfield, Nev. Metal asbestos roofing, 360.
- Belleville district, Ill., to Omaha, Nebr., and group points. Bituminous coal, 623.
- Bellingham, Wash., from eastern points. Commodity rates, 13.
- Bellows Falls, Vt., from Boston, Mass. Imported wood pulp, 323.
- Blackshear, Ga., from northern Florida. Sea-island seed cotton, 21.
- Bluefield, W. Va., from Trebein and Leesburg, Ohio. Grain and products, 135.

- Boston, Mass., from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Boston, Mass., to Spartanburg, S. C. Class and commodity rates, 484.
- Boston, Mass., to Vermont, New Hampshire, Massachusetts, and New York. Imported wood pulp, 323.
- Brooklyn, N. Y., from North Adams and other Massachusetts points. Cotton and woolen piece goods, 41.
- Buffalo, N. Y., to Eau Claire, Wis. Drugs and wooden pedestal, 106.
- Buffalo-Pittsburgh territory to Spartanburg, S. C. Class and commodity rates, 484.
- Butte, Mont., from Spokane and Deer Park, Wash., and Laclede and Sturgeon, Idaho. Lumber, 146.
- Cairo, Ill., from New Orleans. Vegetables, 32.
- Cairo, Ill., from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- Calxico, Cal., to Galveston, New Orleans, and St. Louis. Cotton, 248.
- California to Arizona. Fuel oil, 586.
- California to Galveston, New Orleans, and St. Louis. Cotton, 248.
- California to Goldfield and Tonopah, Nev. Various commodities, 360.
- California from Grand Rapids, Mich., and Rockford, Ill. Furniture, 262.
- California to New Mexico. Sugar, 292.
- California to Phoenix and Prescott and other Arizona points. Sugar and sirup, 158.
- California from Utah. Hogs, 627.
- California ports to and from Alaska, Hawaiian Islands, Washington, and Oregon. Operation of oil steamers, 77.
- California terminals to Montrose and other points in Colorado. Sugar, 409.
- Caney, Kans., to Kiowa, Kans., via Woodward, Okla. Petroleum oil, 271.
- Canton, Ohio, to Kentucky, Tennessee, and Mississippi. Agricultural implements, 90.
- Central freight association territory. Trap or ferry car service charges, 516.
- Central freight association territory from Montrose and Delta Counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Central freight association territory to Pacific coast terminals. Commodity rates, 13.
- Central freight association territory from St. Louis. Grain, 341.
- Central freight association territory to Spartanburg, S. C. Class and commodity rates, 484.
- Charleston, S. C., from Murphy, Tenn., reconsigned at Asheville, N. C. Sugar, 45.
- Charlotte, N. C., from East Radford and Lynchburg, Va., and Anniston, Ala. Cast-iron pipe, 128.
- Chattanooga, Tenn., to Ohio River crossings. Lumber, 652.
- Chicago, Ill. Switching charges on hay, 150.
- Chicago, Ill. Trap or ferry car service charges, 516.
- Chicago, Ill., and points east of, from Delta and Montrose counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Chicago, Ill., to Des Moines, Iowa. Commodity rates, 281.
- Chicago, Ill., to Goldfield, Nev. Various commodities, 360.
- Chicago, Ill., to New Mexico. Class and commodity rates, 292.
- Chicago, Ill., from New Orleans. Vegetables, 32.
- Chicago, Ill., from Oregon, Washington, Idaho, and Montana. Shingles, 111.
- Chicago, Ill., to Pacific coast terminals. Commodity rates, 13.
- Chicago, Ill., to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Stone and marble, 390.
- Chicago, Ill., from San Toy, Ohio. Bituminous coal, 93.
- Chicago, Ill., from Sullivan-Linton group, Ind. Coal, 221.

- Chicago, Ill., to various destinations. Potatoes. Rental charges for insulated cars, 255.
- Chicago, Ill., from Wisconsin. Gravel and sand, 467.
- Chicago Heights, Ill. Demurrage on scrap iron from Duluth, Minn., 75.
- Chicago River. Operation of tugs and barges, 218.
- Chicago switching district. Through routes and joint rates between industrial roads and trunk lines, 234.
- Chickamauga, Ga., to Pacific coast terminals. Coke, 10.
- Cincinnati, Ohio, from southwestern territory, destined to western termini and trunk line territory. Lumber, 652.
- Cincinnati, Ohio, to Spartanburg, S. C. Class and commodity rates, 484.
- Cleveland, Ohio, from San Toy, Ohio, for lake shipment. Bituminous coal, 93.
- Clifton, Ariz., via New Mexico, from Williams, Ariz. Box shooks, 257.
- Clovis, N. Mex., from California. Sugar, 292.
- Coffeyville, Kans., to Arizona. Fuel oil, 586.
- Coffeyville, Kans., from St. Louis, Mo. Class and commodity rates, 231.
- Colorado to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Colorado from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Columbia River. Operation of boat line on, 165.
- Connecticut River points to New York and Brooklyn, N. Y. Cotton and woollen piece goods, 41.
- Cosmopolis, Wash., from eastern points. Commodity rates, 13.
- Council Bluffs, Iowa, from Oregon, Washington, Idaho, and Montana. Shingles, 111.
- Creamery, Ariz., from California. Fuel oil, 586.
- Crockett, Cal., to Goldfield, Nev. Sugar, 360.
- Crooksville district, Ohio, to Chicago and other points in Illinois, Indiana, Michigan, and Cleveland, Sandusky, Toledo, and other points in Ohio. Bituminous coal, 93.
- Dallas, Tex., from and to Shreveport, La. Class and commodity rates, 472.
- Danville, Va., from and to points in the East, West, and South. Class and commodity rates, 430.
- Danville, Va., from Pocahontas and other West Virginia fields. Coal, 430.
- Deer Park, Wash., to Butte and other Montana points. Lumber, 146.
- Dell Rapids, S. Dak., from Roosevelt, Tenn., reconsigned to Sioux Falls, S. Dak. Coal, 122.
- Delta, Colo., from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Delta county, Colo., to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Des Moines, Iowa. Elevation allowances on grain, 442.
- Des Moines, Iowa, from Chicago, Ill. Commodity rates, 281.
- Des Moines, Iowa, to and from Mississippi River, originating at or destined to points east of Illinois-Indiana State line. Class and commodity rates, 281.
- Detroit River. Car-ferry boats, 86.
- Dixie, Ohio, to Chicago, Ill., and points in Indiana, Michigan and Illinois. Bituminous coal, 93.
- Duluth, Minn., to Chicago Heights, Ill. Scrap iron, 75.
- Dupont, Cal., to Goldfield, Nev. High explosives, 360.
- Durham, Ga., to Pacific coast terminals. Coke, 10.
- East Radford, Va., to Charlotte, N. C., and Rock Hill, S. C. Cast-iron pipe, 128.
- East Ryegate, Vt., from Boston, Mass. Imported wood pulp, 323.
- East St. Louis, Ill. Terminal allowances, 453.
- East St. Louis, Ill., from Mobile and New Orleans. Blackstrap molasses, 253.
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- East St. Louis, Ill., to Muskogee, Tulsa, and McAlester, Okla. Roofing and building paper, 3.
- East St. Louis, Ill., from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- East San Pedro, Cal., from eastern points. Commodity rates, 13.
- Eastern points to and from Danville, Va. Class and commodity rates, 430.
- Eastern ports to Spartanburg, S. C. Class and commodity rates, 484.
- Eau Claire, Wis., from Buffalo, N. Y. Drugs and wooden pedestal, 106.
- El Paso, Tex., to Fairbank and Tucson, Ariz. Grain, 30.
- El Paso, Tex., from Kansas City, Chicago, and St. Louis. Fourth section, 292.
- Everett, Wash., from eastern points. Commodity rates, 13.
- Fairbank, Ariz., from El Paso, Tex. Grain, 30.
- Fairmont region, W. Va., to Martins Creek, Pa. Bituminous slack coal, 414.
- Florida to Blackshear, Ga. Sea-island seed cotton, 21.
- Fort Smith, Ark., from Wisconsin. Cheese, 644.
- Fort Worth, Tex. Elevation allowances on grain, 442.
- Fort Worth, Tex., from Roswell and other New Mexico points. Hay, 292.
- Galveston, Tex., from Arizona and southern California. Cotton, 248.
- Genesee Dock, N. Y., to and from Cobourg, Ont. Boat lines, 49, 52.
- Georgian Bay to Middletown, Conn. Grain, 39.
- Ghent, Minn., from La Follette, Tenn., reconsigned at Ludington, Mich. Bituminous coal, 621.
- Giant, Cal., to Tonopah, Nev. High explosives, 360.
- Gilbert, Ariz., from California. Fuel oil, 586.
- Goldfield, Nev., from various points. Commodity rates, 360.
- Grand Rapids, Mich., to northern Illinois and southern Wisconsin. Plaster and other gypsum products, 202.
- Grand Rapids, Mich., to Pacific coast terminals. Furniture, 262.
- Green Bay, Wis., to Arkansas. Cheese, 644.
- Hampton, Va., from Alexandria, La. Lumber, 630.
- Hawaiian Islands from and to California ports. Operation of oil steamers, 77.
- Hercules, Cal., to Goldfield, Nev. High explosives, 360.
- Hillsdale, Mich., from Minneapolis, Minn. Wheat, 481.
- Hinsdale, N. H., from Boston, Mass. Imported wood pulp, 323.
- Holyoke, Mass., from Boston, Mass. Imported wood pulp, 323.
- Hoquiam, Wash., from eastern points. Commodity rates, 13.
- Hotchkiss, Colo., to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Hotchkiss, Colo., from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Houston, Tex., from and to Shreveport, La. Class and commodity rates, 472.
- Huttig, Ark. Through routes and joint rates on lumber, 116.
- Idaho to Iowa. Shingles, 111.
- Illinois. Car fitting for shipments of grain, 60.
- Illinois from Grand Rapids, Mich. Plaster and other gypsum products, 202.
- Illinois from San Toy, Ohio. Bituminous coal, 93.
- Illinois from Wisconsin. Gravel and sand, 467.
- Illinois-Indiana state line, from and to Mississippi River, destined to and from Des Moines, Iowa. Class and commodity rates, 281.
- Illinois-Indiana state line, points east of, from Kansas City, Mo.-Kans. Grain and grain products, 67.
- Illinois mines to Omaha, Nebr., and group points. Bituminous coal, 623.
- Independence, Kans., from St. Louis, Mo. Class and commodity rates, 231.
- Indiana from San Toy, Ohio. Bituminous coal, 93.

Indiana-Illinois state line, points east of, from and to interior Iowa cities. Class rates, 278.

Indiana mines to Chicago, Ill. Coal, 221.

Indianapolis, Ind. Storage in transit on apples, 267.

Indianapolis, Ind., from and to Louisville, Ky. Through routes and joint rates, 640.

Inman, Kans., to Joplin and other points in southwestern Missouri. Flour, bran, and shorts, 197.

Intermountain territory from Missouri River. Commodity rates, 13.

Intermountain territory from Missouri River territory. Re-icing of perishable commodities, 140.

Iowa. Car fitting for shipments of grain, 60.

Iowa from and to points east of the Indiana-Illinois state line. Class rates, 278.

Iowa to Kansas. Class rates, 379.

Iowa to Kansas City, Mo. Coarse grain, 208.

Iowa to Milwaukee, Wis. Grain and flaxseed, 581.

Iowa from Oregon, Washington, Idaho, and Montana. Shingles, 111.

Jacksonville, Fla., from Meredith and Walling Spur, Fla. Car fitting for shipments of lumber, 214.

Johnson City, Tenn., from Perryville, Ohio. Wheat, 25.

Joplin, Mo., from Inman, Kans. Flour, bran, and shorts, 197.

Kansas City, Mo. Elevation allowances on grain, 442.

Kansas City, Mo. Weighing charges on live stock, 423.

Kansas City, Mo., from Iowa. Coarse grain, 208.

Kansas City, Mo., to Muskogee, Tulsa, and McAlester, Okla. Roofing and building paper, 3.

Kansas City, Mo., from Nebraska. Wheat and corn, 381.

Kansas City, Mo., to New Mexico. Class and commodity rates, 292.

Kansas City, Mo., from New Orleans, La. Vegetables, 32.

Kansas City, Mo., from New Orleans, La. Coconut, copra, palm and palm-kernel oils, 634.

Kansas City, Mo., to various destinations. Potatoes. Rental charges for insulated cars, 255.

Kansas City, Mo.-Kans., to Norfolk and Newport News, Va. Through routes and joint rates on grain and products, 67.

Kansas. Car fitting for shipments of grain, 60.

Kansas to Arizona. Fuel oil, refined oils, and engine distillate, 586.

Kansas from Iowa. Class rates, 379.

Kentucky from Canton, Ohio. Agricultural implements, 90.

Kentucky from Trebein and Leesburg, Ohio. Grain and products, 135.

Kiowa, Kans., from Caney, Kans., via Woodward, Okla. Petroleum oil, 271.

La Follette, Tenn., to Vermilion, S. Dak., reconsigned at Ludington, Mich., to Ghent, Minn. Bituminous coal, 621.

La Grange, Ga. Storage charges on salt, 638.

Laclede, Idaho, to Butte and other Montana points. Lumber, 146.

Lake Charles, La., to Las Cruces, N. Mex. Lumber, 388.

Lake Erie. Car-ferry boats, 86.

Lake Erie. Operation of boat line, 47.

Lake Erie ports from San Toy and other points in the Crooksville district of Ohio. Bituminous coal, 93.

Lake Keuka. Operation of boat line, 212.

Lake Michigan. Car-ferry boats, 54, 83, 86.

Lake Ontario. Operation of boat line on, 49, 52.

Lake Winnebago, Wis., to Arkansas. Cheese, 644.

- Lamar, S. C., to Portsmouth, Va., via Pinners Point, Va. Lumber, 469.
- Laredo, Tex., from Alexandria, La. Lumber, 630.
- Las Cruces, N. Mex., from Louisiana and Texas. Lumber, 388.
- Lawrence, Mass., from Boston, Mass. Imported wood pulp, 323.
- Leavenworth, Kans., from Nebraska. Wheat and corn, 381.
- Leesburg, Ohio, to West Virginia, Kentucky, and Virginia. Grain and products, 135.
- Litchfield, Mich., from Minneapolis, Minn. Wheat, 481.
- Little Rock, Ark., to Memphis, Tenn. Lumber, 652.
- Los Angeles, Cal., to Arizona. Sugar and sirup, 158.
- Los Angeles, Cal., from Durham and Chickamauga, Ga. Coke, 10.
- Los Angeles, Cal., to Montrose and other Colorado points. Class and commodity rates, 409.
- Los Angeles, Cal., to New Mexico. Sugar, 292.
- Los Angeles, Cal., from Utah. Hogs, 627.
- Louisiana. Checking and loading charges for shipments of rice, 511.
- Louisiana. Milling-in-transit rates on logs, staves, and stave bolts, 169.
- Louisiana to Chicago and other northern points. Vegetables, 32.
- Louisiana to Las Cruces, N. Mex. Lumber, 388.
- Louisiana to New Orleans for export, milled-in-transit at Alexandria. Logs, 630.
- Louisiana to points in the Pecos Valley. Lumber, 292.
- Louisiana to St. Louis, Memphis, and other points. Hardwood lumber, 708.
- Louisiana, west of the Mississippi River, from Kansas City, Mo. Grain, 442.
- Louisville, Ky., to and from Indianapolis, Ind. Through routes and joint rates, 640.
- Louisville, Ky., from New Orleans. Vegetables, 32.
- Louisville, Ky., from southwestern territory. Lumber, 652.
- Louisville, Ky., to Spartanburg, S. C. Class and commodity rates, 484.
- Lynchburg, Va., to Charlotte, N. C., and Rock Hill, S. C. Cast-iron pipe, 128.
- McAlester, Okla., from St. Louis, Kansas City, and East St. Louis. Roofing and building paper, 3.
- McCuneville, Ohio, to Chicago, Ill., and points in Indiana, Michigan, and Illinois. Bituminous coal, 93.
- Martins Creek, Pa., from West Virginia and Pennsylvania mines. Bituminous slack coal, 414.
- Massachusetts to New York and Brooklyn, N. Y. Cotton and woolen piece goods, 41.
- Memphis, Tenn. Reshipping rates on grain and mixed feed, 315.
- Memphis, Tenn., from Arkansas and Louisiana. Hardwood lumber, 708.
- Memphis, Tenn., to Arkansas. Lime, cement, and plaster, 124.
- Memphis, Tenn., to Asheville, N. C. Sugar, 45.
- Memphis, Tenn., from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- Memphis, Tenn., from Stuttgart and other Arkansas points. Logs, 216.
- Mena, Ark., from Wisconsin. Cheese, 644.
- Meredith, Fla., to Jacksonville. Car fitting for shipments of lumber, 214.
- Michigan from Minnesota. Pulp wood, 500.
- Michigan from San Toy, Ohio. Bituminous coal, 93.
- Middletown, Conn., from Georgian Bay. Grain, 39.
- Millers, Nev., from San Diego, Cal. Cyanide of potassium, 360.
- Millers Falls, Mass., from Boston, Mass. Imported wood pulp, 323.
- Milwaukee, Wis., from Iowa, Minnesota, and South Dakota. Grain and flaxseed, 581.
- Minneapolis, Minn., from Chicago and Peoria, Ill. Stone and marble, 390.
- Minneapolis, Minn., to New York, N. Y., milled-in-transit at Hillsdale and Litchfield, Mich. Wheat and flour, 481.

- Minneapolis, Minn., to various destinations. Potatoes. Rental charges for insulated cars, 255.
- Minnesota. Car fitting for shipments of grain, 60.
- Minnesota to Milwaukee, Wis. Grain and flaxseed, 581.
- Minnesota to various destinations. Protection of potatoes in winter, 154.
- Minnesota to various destinations. Potatoes. Rental charges for insulated cars, 255.
- Minnesota to Wisconsin and Michigan. Pulp wood, 500.
- Minnesota Transfer, Minn., from Chicago and Peoria, Ill. Stone and marble, 390.
- Mississippi from Canton, Ohio. Agricultural implements, 90.
- Mississippi River from and to Des Moines, originating at or destined to points east of Illinois-Indiana state line. Class and commodity rates, 281.
- Mississippi River common points from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Mississippi River crossings from South Pittsburg, Tenn. Lumber, 333.
- Mississippi River crossings to Spartanburg, S. C. Class and commodity rates, 484.
- Mississippi River, points west of, from and to points east of the Indiana-Illinois state line. Class rates, 278.
- Mississippi River, territory west of. Trap or ferry car service charges, 516.
- Mississippi Valley territory from St. Louis. Grain, 341.
- Mississippi Valley territory to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and Ohio River crossings, 652.
- Missouri from Inman, Kans. Flour, bran, and shorts, 197.
- Missouri to St. Louis for beyond. Grain, 341.
- Missouri River and points east of to Montrose and other Colorado points. Class and commodity rates, 393.
- Missouri River and points east of to Willamette Valley points in Oregon, via Portland and Sacramento. Transcontinental commodity rates, 319.
- Missouri River, points southwest of, from Kansas City, Mo., and other points. Grain, 442.
- Missouri River common points from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Missouri River to Goldfield, Nev. Various commodities, 360.
- Missouri River to Intermountain territory. Commodity rates, 13.
- Missouri River territory. Elevation allowances on grain, 442.
- Missouri River territory to Pacific and north Pacific coast, Spokane, Montana, and intermountain territories. Re-icing of perishable commodities, 140.
- Mobile, Ala., to St. Louis and East St. Louis. Blackstrap molasses, 253.
- Montana to Iowa. Shingles, 111.
- Montana from Spokane and Deer Park, Wash., and Laclede and Sturgeon, Idaho. Lumber, 146.
- Montana territory from Missouri River territory. Re-icing of perishable commodities, 140.
- Montrose, Colo., from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Montrose County, Colo., to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Muskogee, Okla., from St. Louis, East St. Louis, and Kansas City. Roofing and building paper, 3.
- Nebraska. Car fitting for shipments of grain, 60.
- Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans. Wheat and corn, 381.
- Nevada from various points. Commodity rates, 300.

- New England from Boston, Mass. Imported wood pulp, 323.
- New Mexico from California. Sugar, 292.
- New Mexico from Kansas City, St. Louis, and Chicago. Class and commodity rates, 292.
- New Orleans, La., from Arizona and southern California. Cotton, 248.
- New Orleans, La., to Chicago, Kansas City, Louisville, Cairo, and points in Pittsburgh-Buffalo territory. Vegetables, 32.
- New Orleans, La., to Kansas City, Mo. Coconut, copra, palm, and palm-kernel oils, 634.
- New Orleans, La., from other Louisiana points, milled-in-transit at Alexandria. Logs, 630.
- New Orleans, La., to St. Louis and East St. Louis. Blackstrap molasses, 253.
- New York, N. Y., to Goldfield, Nev. Various commodities, 360.
- New York, N. Y., from Minneapolis, Minn., milled-in-transit at Hilledale and Litchfield, Mich. Flour, 481.
- New York, N. Y., from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- New York, N. Y., from North Adams and other Massachusetts points. Cotton and woolen piece goods, 41.
- New York, N. Y., to Pacific coast terminals. Commodity rates, 13.
- New York, N. Y., to Spartanburg, S. C. Class and commodity rates, 484.
- New York from North Adams and other Massachusetts points. Cotton and woolen piece goods, 41.
- Newport, Tenn., to Virginia cities, via Asheville, N. C. Lumber, 448.
- Newport News, Va., from Kansas City, Mo.-Kans. Through routes and joint rates on grain and products, 67.
- Norfolk, Va., from Kansas City, Mo.-Kans. Through routes and joint rates on grain and products, 67.
- Norfolk, Va., from Trebein and Leesburg, Ohio. Grain and products, 135.
- North Adams, Mass., to New York and Brooklyn, N. Y. Cotton and woolen piece goods, 41.
- North Dakota. Car fitting for shipments of grain, 60.
- North Hoosick, N. Y., from Boston, Mass. Imported wood pulp, 323.
- North Pacific coast to New Mexico. Class and commodity rates, 292.
- North Pacific coast territory, from Missouri River territory. Re-icing of perishable commodities, 140.
- Oakland, Cal., from eastern points. Commodity rates, 13.
- Official classification territory. Allowances to short lines in, 596.
- Official classification territory. Classification of lead stereotype plates, 326.
- Ohio. Charges for transportation and disposal of waste material, 337.
- Ohio River crossings from South Pittsburg, Tenn. Lumber, 333.
- Ohio River crossings from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- Ohio River crossings to Spartanburg, S. C. Class and commodity rates, 484.
- Oklahoma City, Okla., and related points, from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Olathe, Colo., to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Olathe, Colo., from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Omaha, Nebr. Elevator allowances on grain, 442.
- Omaha, Nebr., from Belleville district, Ill. Bituminous coal, 623.
- Oregon from and to California ports. Operation of oil steamers, 77.

- Oregon from eastern points, via Portland and Sacramento. Transcontinental commodity rates, 319.
- Oregon to Iowa. Shingles, 111.
- Oregon from Grand Rapids, Mich., and Rockford, Ill. Furniture, 262.
- Pacific coast. Operation of boat line on, 165.
- Pacific coast terminals from C. F. A. and trunk line territories. Commodity rates, 13.
- Pacific coast terminals from Durham and Chickamauga, Ga. Coke, 10.
- Pacific coast terminals from Grand Rapids, Mich., and Rockford, Ill. Furniture, 262.
- Pacific coast territory from Missouri River territory. Reicing of perishable commodities, 140.
- Paonia, Colo., to eastern points. Apples, deciduous fruits, and vegetables, 400.
- Paonia, Colo., from Missouri River and points east of, and Los Angeles and San Francisco, Cal. Class and commodity rates, 393, 409.
- Pecos Valley of New Mexico, to Fort Worth, Tex. Hay, 292.
- Pecos Valley of New Mexico, from Texas, Louisiana, and Arkansas. Lumber, 292.
- Pennsylvania. Charges for transportation and disposal of waste materials, 337.
- Peoria, Ill., to St. Paul, Minneapolis, and Minnesota Transfer, Minn. Stone and marble, 390.
- Perryville, Ohio, to Johnson City, Tenn. Wheat, 25.
- Perth Amboy, N. J., to Goldfield, Nev. Cyanide of potassium, 360.
- Peru, Ill., to Tonopah, Nev. Sheet zinc, 360.
- Philadelphia, Pa., from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Philadelphia, Pa., to Spartanburg, S. C. Class and commodity rates, 484.
- Phoenix, Ariz., from California. Sugar and sirup, 158.
- Phoenix, Ariz., from Missouri River. Commodity rates, 13.
- Pine Bluff, Ark., to Memphis, Tenn. Lumber, 652.
- Pine Bluff, Ark., from Wisconsin. Cheese, 644.
- Piners Point, Va. Demurrage on shipments of lumber from Lamar, S. C., destined to Portsmouth, Va., 469.
- Pittsburgh, Pa. Charges for transportation and disposal of waste materials at, 337.
- Pittsburgh, Pa., to Goldfield, Nev. Various commodities, 360.
- Pittsburgh, Pa., from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Pittsburgh, Pa., to Pacific coast terminals. Commodity rates, 13.
- Pittsburgh, Pa., to Spartanburg, S. C. Class and commodity rates, 484.
- Pittsburgh-Buffalo territory to Pacific coast terminals. Commodity rates, 13.
- Pittsburgh-Buffalo territory, from New Orleans. Vegetables, 32.
- Pocahontas district, W. Va., to Danville, Va. Coal, 430.
- Port Aransas, Tex. Wharfage charges on fuel oil, 330.
- Portland, Oreg., from Armory, Mass. Motor cycles, 120.
- Portland, Oreg., from eastern points. Commodity rates, 13.
- Portland, Oreg., from eastern points, destined to points in the Willamette Valley in Oregon. Transcontinental commodity rates, 319.
- Portsmouth, Va., from Lamar, S. C., via Piners Point, Va. Lumber, 469.
- Prescott, Ariz., from California. Sugar and sirup, 158.
- Pueblo, Colo., to Goldfield, Nev. Machinery and parts, 360.
- Quincy, Ill., and groups, to and from points east of the Indiana-Illinois State line. Class and commodity rates, 409.
- Reno, Nev., from Missouri River. Commodity rates, 13.
- Rock Hill, S. C., from East Radford and Lynchburg, Va., and Anniston, Ala. Cast-iron pipe, 128.

- Rockford, Ill., to Pacific coast terminals. Furniture, 262.
- Roosevelt, Tenn., to Dell Rapids, S. Dak., reconsigned to Sioux Falls, S. Dak. Coal. 122.
- Roswell, N. Mex., to Fort Worth, Tex. Hay, 292.
- Sacramento, Cal., from eastern points, destined to points in the Willamette Valley in Oregon. Transcontinental commodity rates, 319.
- Sacramento River. Operation of boat line on, 174, 648.
- St. Clair River. Car-ferry boats, 86.
- St. Joseph, Mo., from Nebraska. Wheat and corn, 381.
- St. Louis, Mo. Elevation allowances on grain, 442.
- St. Louis, Mo. Terminal allowances, 453.
- St. Louis, Mo., from Arizona and southern California. Cotton, 248.
- St. Louis, Mo., from Arkansas and Louisiana. Hardwood lumber, 708.
- St. Louis, Mo., to C. F. A., trunk line, southeastern, southwestern, and Mississippi Valley territories. Grain, 341.
- St. Louis, Mo., to Coffeyville and Independence, Kans. Class and commodity rates, 231.
- St. Louis, Mo., to Des Moines, Iowa. Bottles, 281.
- St. Louis, Mo., to Goldfield, Nev. Dry litharge, 360.
- St. Louis, Mo., from Mobile and New Orleans. Blackstrap molasses, 253.
- St. Louis, Mo., to Montrose and other Colorado points. Class and commodity rates, 393.
- St. Louis, Mo., to Memphis, Tenn. Reshipping rates on mixed feed and grain, 315.
- St. Louis, Mo., to Muskogee, Tulsa, and McAlester, Okla. Roofing and building paper, 3.
- St. Louis, Mo., to New Mexico. Class and commodity rates, 292.
- St. Louis, Mo., from Oregon, Washington, Idaho, and Montana. Shingles, 111.
- St. Louis, Mo., from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- St. Paul, Minn., and common points, from Delta and Montrose counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- St. Paul, Minn., from Chicago and Peoria, Ill. Marble and stone, 390.
- St. Paul, Minn., to various destinations. Potatoes. Rental charges for insulated cars, 255.
- Salt Lake City, Utah, to Goldfield, Nev. Iron mining cars, 360.
- Salt Lake City, Utah, to California. Hogs, 627.
- San Diego, Cal., from eastern points. Commodity rates, 13.
- San Diego, Cal., to Goldfield and Tonopah, Nev. Various commodities, 360.
- San Francisco, Cal., to Arizona. Sugar and sirup, 158.
- San Francisco, Cal., from Chickamauga and Durham, Ga. Coke, 10.
- San Francisco, Cal., from eastern points. Commodity rates, 13.
- San Francisco, Cal., to Goldfield and Tonopah, Nev. Various commodities, 360.
- San Francisco, Cal., to Montrose and other Colorado points. Class and commodity rates, 409.
- San Francisco, Cal., to New Mexico. Sugar, 292.
- San Pedro, Cal., from eastern points. Commodity rates, 13.
- San Toy, Ohio, to Chicago and other points in Illinois, Indiana, Michigan, and Cleveland, Sandusky, Toledo and other points in Ohio. Bituminous coal, 93.
- Sandusky, Ohio, from San Toy, Ohio, for lake shipment. Bituminous coal, 93.
- Santa Fe, N. Mex., from Kansas City, St. Louis, and Chicago. Class and commodity rates, 292.
- Schenectady, N. Y. Watering, feeding, and resting charges on horses consigned from Scotland, S. Dak., 1.

- Seattle, Wash., from Armory, Mass. Motorcycles, 120.
- Seattle, Wash., from eastern points. Commodity rates, 13.
- Seattle, Wash., to Iowa. Shingles, 111.
- Shreveport, La., from and to Dallas and Houston, Tex. Class and commodity rates, 472.
- Sioux City, Iowa, from southwestern territory. Yellow-pine lumber, 102.
- Sioux Falls, S. Dak., from Roosevelt, Tenn., reconsigned at Dell Rapids, S. Dak. Coal, 122.
- South Akron, Ohio, to Goldfield, Nev. Mining machinery, 360.
- South Bellingham, Wash., from eastern points. Commodity rates, 13.
- South Dakota. Car fitting for shipments of grain, 60.
- South Dakota to Milwaukee, Wis. Grain and flaxseed, 581.
- South Pittsburg, Tenn., to Ohio and Mississippi river crossings. Lumber, 333.
- Southeastern territory from St. Louis. Grain, 341.
- Southeastern territory to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and Ohio River crossings. Lumber, 652.
- Southern classification territory. Classification of grapes in baskets, 58.
- Southern classification territory. Classification of lead stereotype plates, 326.
- Southern points from and to Danville, Va. Class and commodity rates, 490.
- Southwestern territory from St. Louis. Grain, 341.
- Southwestern territory. Trap or ferry car service charges, 516.
- Southwestern territory to St. Louis, East St. Louis, Thebes, Cairo, Memphis, and Ohio River crossings. Lumber, 652.
- Southwestern territory to Sioux City, Iowa. Yellow-pine lumber, 102.
- Spartanburg, S. C., from eastern points, Buffalo-Pittsburgh, and C. F. A. territories, Ohio and Mississippi River crossings, and Virginia cities. Class and commodity rates, 484.
- Spokane, Wash., to Butte and other Montana points. Lumber, 146.
- Spokane, Wash., from Missouri River. Commodity rates, 13.
- Spokane territory from Missouri River territory. Re-icing of perishable commodities, 140.
- Straits of Mackinac. Operation of car ferries on, 229.
- Sturgeon, Idaho, to Butte and other Montana points. Lumber, 146.
- Stuttgart, Ark., to Memphis, Tenn. Logs, 216.
- Sullivan-Linton group, Ind., to Chicago, Ill. Coal, 221.
- Tacoma, Wash., from eastern points. Commodity rates, 13.
- Tennessee from Canton, Ohio. Agricultural implements, 90.
- Texas to Arizona. Fuel oil, refined oils, and engine distillate, 598.
- Texas to Las Cruces, N. Mex. Lumber, 388.
- Texas to points in the Pecos Valley. Lumber, 292.
- Texas to Shreveport, La. Uncompressed cotton, 472.
- Texas common points from Montrose and Delta counties, Colo. Apples, deciduous fruits, and vegetables, 400.
- Thebes, Ill., from southwestern, southeastern, and Mississippi Valley territories. Lumber, 652.
- Titusville, Pa., to various destinations. Crude oil, 179.
- Toledo, Ohio, from San Toy, Ohio, for lake shipment. Bituminous coal, 93.
- Tonopah, Nev., from various points. Commodity rates, 360.
- Trans-Missouri territory. Trap or ferry car service charges, 516.
- Trebein, Ohio, to West Virginia, Kentucky, and Virginia. Grain and products, 135.
- Trunk line territory. Trap or ferry car service charges, 516.
- Trunk line territory from Cincinnati, Ohio. Lumber, 652.
- Trunk line territory to Pacific coast terminals. Commodity rates, 13.

- Trunk line territory from St. Louis, Mo. Grain, 341.
- Tucson, Ariz., from El Paso, Tex. Grain, 30.
- Tucumcari, N. Mex., from Kansas City, St. Louis, and Chicago. Class and commodity rates, 292.
- Tulsa, Okla., from St. Louis, East St. Louis, and Kansas City. Roofing and building paper, 3.
- Turners Falls, Mass., from Boston, Mass. Imported wood pulp, 323.
- Twin cities to Chicago, originating at North Pacific coast. Shingles, 111.
- Utah to California. Hogs, 627.
- Vancouver, Wash., from eastern points. Commodity rates, 13.
- Vaughn, N. Mex., from California. Sugar, 292.
- Vermilion, S. Dak., from La Follette, Tenn., reconsigned at Ludington, Mich., to Ghent, Minn. Bituminous coal, 621.
- Virginia from Trebein and Leesburg, Ohio. Grain and products, 135.
- Virginia cities from Newport, Tenn., and Asheville, N. C. Lumber, 448.
- Virginia cities to Spartanburg, S. C. Class and commodity rates, 484.
- Walling Spur, Fla., to Jacksonville, Fla. Car fitting for shipments of lumber, 214.
- Warren, Pa., to various destinations. Crude oil, 179.
- Washington from and to California ports. Operation of oil steamers, 77.
- Washington from Grand Rapids, Mich., and Rockford, Ill. Furniture, 262.
- Washington to Iowa. Shingles, 111.
- West Virginia. Charges for transportation and disposal of waste materials, 337.
- West Virginia from Trebein and Leesburg, Ohio. Grain and products, 135.
- West Virginia mines to Danville, Va. Coal, 430.
- Western classification territory. Classification of feed and litter carriers, 383.
- Western points from and to Danville, Va. Class and commodity rates, 439.
- Western trunk line territory. Rules and classification of various commodities, 554.
- Western trunk line territory. Trap or ferry car service charges, 516.
- Westmoreland region, Pa., to Martins Creek, Pa. Bituminous slack coal, 414.
- Willamette River. Operation of boat line on, 165.
- Willamette Valley from eastern points, via Sacramento and Portland. Transcontinental commodity rates, 319.
- Williams, Ariz., via New Mexico, to Clifton, Ariz. Box shooks, 257.
- Wilmington, Cal., from eastern points. Commodity rates, 13.
- Wisconsin to Chicago, Ill. Gravel and sand, 467.
- Wisconsin to Fort Smith, Mena, and Pine Bluff, Ark. Cheese, 644.
- Wisconsin from Grand Rapids, Mich. Plaster and other gypsum products, 202.
- Wisconsin from Minnesota. Pulp wood, 500.
- Wisconsin to various destinations. Protection of potatoes in winter, 154.
- Wisconsin to various destinations. Potatoes. Rental charges for insulated cars, 265.
- Woodward, Okla., from Caney, Kans., destined to Kiowa, Kans. Petroleum oil, 271.

INDEX.

The number in parentheses following citation indicates where paragraph occurs or subject is considered.)

ABSORPTION.

Of switching charges under through route arrangements. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (71).

Petitioner absorbs out of its rail revenue the cost of ferryboat service. *A. A. R. R. Co. Operation of Car-Ferry Boats*, 83 (84).

Cancellation of the absorption of switching charges in the Chicago switching district, justified. *Rates on Hay to Chicago*, 150.

Average charges for switching services absorbed by line-haul carriers amount to \$12.75 per car. *Rates in Chicago Switching District*, 234 (240).

Whenever absorption of elevation charges is made the grain can not lawfully move forward except at the balance of the through rate. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (351).

The Lowrey tariff provides for earnings of \$15 per car before switching charges will be absorbed. *Trap or Ferry Car Service Charges*, 516 (525).

In absence of discrimination Commission has no power to compel carrier to absorb charges for switching or other movement beyond its own rails. *Second Industrial Railways Case*, 596 (601-602).

A bridge charge of 20 cents over the Mississippi River is absorbed by the Wabash. *Coal Rates from Illinois Mines to Omaha*, 623 (624-625).

ACCOUNTING.

Account kept by "the grain door bureau" is basis of settlements between carriers for grain doors, etc. *Farmers Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (66).

ACT TO REGULATE COMMERCE. See also AMENDMENTS.

Nothing in the act requires carriers to rest animals in transit. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

ADDITIONAL CHARGES.

To now add a charge to the line-haul rate for customary placement of cars at factory doors would be revolutionary. *Car Spotting Charges*, 609 (616).

That an industry is complex, or that it requires an interplant service in addition to receipt and delivery of carload freight, is not sufficient to justify an additional charge for placement. *Id.* (618).

An additional charge should be made for each additional placement. *Id.* (618).

ADDITIONAL SERVICE. See also RE-ICING.

There must be a point beyond which an additional charge over the line-haul rate can be justified if additional service is in fact rendered. *Second Industrial Railways Case*, 596 (602).

ADJUSTMENT OF RATES. See also DISTURBANCE OF ADJUSTMENT; RELATIVE ADJUSTMENT.

Comparisons show that vegetable rates are not above the general level. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (35).

Carriers are revising tariffs covering factors of rates from Canton and Peoria, Ill., to south of Ohio River. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (92).

ADMINISTRATIVE QUESTIONS.

The whole scope of the act shows it to have been intended that this Commission and not the courts shall pass upon. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (190).

ADMINISTRATIVE RULING.

Rule 286, paragraph (f) of bulletin 6, does not apply, the case being one of erroneous billing. *Goldfield Cases*, 360 (378).

Ruling 97, Conference Rulings Bulletin No. 6. *Trap or Ferry Car Service Charges*, 516 (521).

Rule 67, Tariff Circular 18-A, cited. *Western Trunk Line Rules*, 554 (568).

Rule 76, Tariff Circular 17-A, cited. *Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 630 (632).

ADVANCE IN RATES.

Increased rates on cotton piece goods and woolen piece goods, North Adams, Mass., and other points on the B. & M. and B. & A. railroads to New York, N. Y., found justified. *Rates on Cotton Piece Goods*, 41.

Evidence as to need of more revenue consequent upon larger expenditures, haul of empty cars, and divisions exacted, not sufficient to justify. *Lumber Rates from Points in Arkansas*, 102 (103).

It is as much increase of rate to give less service for the same amount as to charge a greater amount for the same service. *Rates on Hay to Chicago*, 150 (152).

Increases resulting from withdrawal of concentration rates on cotton and cotton linters, not justified. *Concentration of Cotton at Alexandria, La.*, 163.

Proposed cancellation of rates on logs from Stuttgart, Ark., and points in vicinity of Memphis, Tenn., not justified. *Rates on Logs from Stuttgart, Ark.*, 216.

Cancellation of through routes and rates in connection with tunnel and lighterage companies, not justified. *Rates in Chicago Switching District*, 234 (241).

Conditions not so favorable for eastbound traffic as to volume, loading, etc., and the difference in service justifies a somewhat higher rate eastbound. *Eastbound Transcontinental Cotton Rates*, 248 (252).

Specific rates are not to exceed those in effect prior to May 31, 1914, from Missouri River cities to Kansas points. *Iowa Board of R. R. Comrs. v. A. E. R. R. Co.* 379 (380).

Increased rates to St. Paul justified for stone and marble sawed or dressed, but not for rough stone and marble. *Rates on Stone and Marble from Chicago and Peoria*, 390.

Increased rates from certain grouped points in Wisconsin increasing the differential over rates from nearer grouped points, not justified. *Sand and Gravel Rates from Wisconsin Points to Chicago*, 467.

The record indicates that in making the general revision, the carriers sought to avoid general increases, and it is argued that many so-called increases are merely paper increases. In general the changes are approved. *Western Trunk Line Rules*, 554 (556).

Increase, from \$2.05 to \$2.25 per net ton, in rate on bituminous coal from Southern Railway points in Belleville district and group, justified; it being established that the \$2.05 rate will depress rates from other fields. *Coal Rates from Illinois Mines to Omaha*, 623.

Increased rates on hogs between Utah and California, justified; evidence showing that respondent operates through a desert country where traffic is scarce, cost of operation high, claims for loss and damage considerable, and indicating that same are not unreasonable. *Rates on Hogs*, 627.

Proposed increased rates on cheese from Wisconsin to points in Arkansas not shown to be reasonable. The propriety thereof must be sustained by evidence

ADVANCE IN RATES—Continued.

of a probative nature showing satisfactory reasons for the increase. *Echols & Co. v. A. & W. Ry. Co.* 644 (646).

Increased rates on yellow-pine lumber from southwestern blanket and points on K. C. S. Ry., on lumber, all kinds, from territory north of Arkansas River, northbound, and rates southbound to New Orleans, not justified. Rates on Lumber from Southern Points, 652.

Increased rates on yellow-pine lumber from southwestern yellow-pine blanket to St. Louis, East St. Louis, Thebes, and Cairo, not justified. *Id.* 652.

Increased rates from points on various southwestern and southern lines, justified. *Id.* 652.

Reasons given by southwestern lines for increases are need of revenue, low rates, overcoming of trade prejudice, and fact that water competition is negligible. *Id.* (656).

We have frequently said it is carrier's duty under the statute to establish the reasonableness of the increased rates rather than the reasonableness of the increase. *Id.* (680).

Rates from Cincinnati to western termini and points in trunk line territory should not exceed rates as increased following the *Five Per Cent Case*. *Id.* (706).

Proposed rates on cottonwood and gum have been permitted in all cases in which they do not exceed rates on other hardwoods. *Id.* (707).

Increased rates to north bank Ohio River crossings are permitted wherever necessary to effect a spread of 1 cent between rates to south bank crossing. *Id.* (707).

All increased rates on hardwood from west of the Mississippi River which do not exceed rates on yellow pine are justified. *Id.* (707).

ADVANTAGES AND DISADVANTAGES. See also LOCATION.

Muskogee is at a disadvantage, though nearer to consuming points, in rates on roofing paper. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (7).

ADVERTISING MATTER.

Substitution of western classification rule to govern, shipped with articles advertised, permitted. *Western Trunk Line Rules*, 554 (574).

AGENT.

Carrier, in supplying horses with food, acted as agent of shipper. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

ALL-RAIL RATES.

From the east to Spartanburg which exceed those to Charlotte by more than rates to Spartanburg from Virginia cities exceed rates to Charlotte held unjustly discriminatory. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (492).

ALLOWANCES. See, also, TAP LINES.

If carrier makes any allowance to country elevators for work or materials furnished, conditions, purposes, and maximum allowance must be stated in tariffs. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (65).

The L. & P. B. Ry. may be paid \$2 a car for switching service from mills at Huttig to the Iron Mountain connection, and \$3 a car for switching to Dollar Junction. *The Tap Line Case*, 116 (117).

Refusal to pay allowance to shippers for staking cars for interstate or foreign shipments of lumber not unlawful. *Shands v. S. A. L. Ry.* 214 (215).

Shipper entitled to an allowance for use of his own refrigerator car where carrier fails to furnish. *Rules Governing Transportation of Potatoes*, 255 (256).

Must be fixed and specifically provided for in tariffs. *Id.* (256).

Assessment of freight charges upon hoof selling weights, less fill allowances, not found unlawful. *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.*, 423 (429).

ALLOWANCES—Continued.

Cancellation of allowances for elevation of grain and seeds, when not for export, destined to all points west and southwest of Missouri River and in Louisiana west of Mississippi River, justified. Grain Elevation Allowances at Kansas City, 442.

It is not shown that unjust discrimination will result from fact that some allowances are to be canceled while others remain. *Id.* (447).

On carload and less-than-carload traffic received by transfer companies, discussed. St. Louis Terminal Case, 453 (459, 460).

Cancellation of rule making an allowance for transfer of fruits and vegetables from East St. Louis to St. Louis, authorized. Western Trunk Line Rules, 554 (578).

Rule providing for equipment allowances for use of cars, may be canceled. *Id.* (557-578).

Basis of allowances or divisions of joint rates granted under agreement with trunk lines must be shown specifically in a statement to be filed with the Commission. Second Industrial Railways Case, 596 (603).

It does not follow that because the line-haul rate covers the movement incident to receipt and delivery of car-load freight on industry spurs, etc., that the owner of property transported may in every case receive an allowance when he performs that service. Car Spotting Charges, 609 (617).

AMENDMENTS. See also CARMACK AMENDMENT; CUMMINS AMENDMENT; HEPBURN ACT.

Of 1906 to section 1; of 1889 to section 12; of 1906 and 1910 to section 15. Pennsylvania Paraffine Works v. P. R. R. Co. 179 (185).

Commission's recommendation to Congress respecting steel coaches for passenger traffic, discussed. *Id.* (188).

Of 1910 to section 4. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (300).

AMORTIZATION.

A plan of, can not be applied to pulp wood alone in prescribing rates for future. Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co. 500 (510).

ANALOGOUS ARTICLES.

Other types of carriers analogous to feed and litter carriers are rated same in western classification. Loudon Machinery Co. v. A., T. & S. F. Ry. Co. 383 (387).

"ANY-QUANTITY" RATES.

Many commodities are not provided with carload ratings in official classification, but move under "any-quantity" ratings. Trap or Ferry Car Service Charges, 516 (524).

ARBITRARIES.

Varying with distance, used in constructing rates to back-haul territory. Commodity Rates to Pacific Coast Terminals, 13 (17).

Local rate or an arbitrary is added in constructing rates to branch-line points on D. & R. G. Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. 409 (411).

Over New Orleans rate charged by western lines are not unreasonable. Rates on Lumber from Southern Points, 652 (703).

ATTENDANTS. See CABETAKER.**AVERAGES.**

Per car and per car-mile earnings, loading, value, and weight of prepared roofing paper to Oklahoma points. Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co. 3 (6).

AVERAGES—Continued.

Weight of carload of unginned sea-island cotton is 20,000 to 23,000 pounds.

Brantley Co. v. A. C. L. R. R. Co. 21 (23).

Haul many miles less than average distance, New Orleans to Chicago. New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (34).

From the fact that average distance is substantially the same from two districts it does not necessarily follow that higher rates from one are unreasonable. San Toy Coal Co. v. A., C. & Y. Ry. Co. 93 (96).

Distance, haul, per car earnings, per car-mile revenue, and short-line distance, various coal districts to Lake Erie ports. *Id.* (96, 99, 101).

Weighted haul, southwestern blanket to Sioux City is 1,117 miles, and to Omaha, 960 miles. Lumber Rates from Points in Arkansas, 102 (103, 105).

Car-mile earnings, loading, and ton-mile earnings, considered. Rates on Hay to Chicago, 150 (151).

Haul considered in determining reasonableness of rates. Transit Rates on Logs and Staves at Alexandria, La., 169 (171).

Distance, Hutchinson, McPherson, and Inman, Kans., to southwestern Missouri. Enns Milling Co. v. C., R. I. & P. Ry. Co. 197 (199).

Distance, weighted mileage, per ton-mile and car-mile earnings, Linton and Clinton coal fields to Chicago. Monon Coal Co. v. C. & E. I. R. R. Co. 221 (223).

Average switching charges absorbed by line-haul carriers, and average carload loading of less than carloads. Rates in Chicago Switching District, 234 (240).

Carload weight of cotton westbound is 38,000 pounds. Eastbound Transcontinental Cotton Rates, 248 (250).

Revenue per ton of freight and per ton-mile of the A. & N. M. for 1914. California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co. 257 (261).

Distance from Kansas City to Burnt district of Texas is less than to common points. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (303).

Average system earnings are said not to afford a proper measure of earnings on a particular commodity between specific points. Moore & Thompson Paper Co. v. B. & M. R. R. 323 (325).

Per train tonnage on lines south of Goldfield, Nev., is small. Goldfield Cases, 360 (369).

Weights range from 43,350 to 71,305 pounds per car. Rates on Stone and Marble from Chicago and Peoria, 390 (391).

Ton-mile revenue and distances from Montrose and Delta territory to various destinations. Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. 400 (404, 405).

Haul, distance, car-mile cost, coal loading, etc., from Fairmont and Westmoreland regions to cement plant at Martins Creek, Pa. Alpha Portland Cement Co. v. B. & O. R. R. Co. 414 (415-417).

A discussion of comparisons of average earnings on coal traffic with average earnings on all traffic per train, car, and ton mile, would not be profitable. *Id.* (419).

Assembling haul, car-mile earnings, haul, and ton-mile earnings on coal moving to Danville via Lynchburg. City of Danville, Va., v. S. Ry. Co. 430 (441).

Per ton-mile, per car-trip, per car-mile, and per train-mile revenue, average load per car, and average distance considered in determining reasonableness of rates on fuel oil, refined oils, slack coal, and engine distillate to Arizona. Pacific Creamery Co. v. S. P. Co. 586 (588-594).

The fact that the average haul increases in length as timber is cut away in northern part of blanket can not justify continual increases in the blanket rate. Rates on Lumber from Southern Points, 652 (659).

AVERAGES—Continued.

Revenue per ton-mile, average weight, haul, distance, earnings, etc., considered in determining reasonableness of proposed increase. *Id.* 652 (658-677).

Average haul on hardwood moving on yellow-pine rate is less than that on yellow pine moving from so-called yellow-pine blanket territory. Northbound Rates on Hardwood, 708 (710).

BACK HAUL.

Any milling-in-transit arrangement maintained at Alexandria by the M. L. & T. R. R. involves back-haul service. Transit Rates on Logs and Staves at Alexandria, La. 169 (171).

So-called back-haul charges now in effect at Newport, Tenn., are not found unjustly discriminatory. *Spiegle & Co. v. S. Ry. Co.* 448 (451).

Is the distance to the transit point and not the double haul. *Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 630 (632, 633).

BACK-HAUL TERRITORY.

Carriers should be authorized to make such rates to intermediate points in so-called back-haul territory as will induce direct movement of freight thereto. Commodity Rates to Pacific Coast Terminals, 13 (17).

Rates to back-haul points constructed by adding to full rates to terminals, arbitraries varying with distance, authorized, within prescribed limits. *Id.* (17).

BARGES.

Owing to conditions prevailing on upper Sacramento River it is necessary to navigate in the busy season in less than 30 inches of water and to use barges.

S. P. Co., Ownership of Stock in Transportation Co. 648 (650).

BASIS OF RATES.

The general rate structure from Kansas grain fields and milling points to markets in southwestern Missouri is known as the "higher Kansas City rate basis."

Enns Milling Co. v. C., R. I. & P. Ry. Co. 197 (199).

All rates from east of Indiana-Illinois state line to points west of Mississippi River, except transcontinental rates, are based either on Chicago or the river. *Indianapolis Chamber of Commerce v. C., C. & St. L. Ry. Co.* 267 (268).

BILLING.

It would be unlawful to require cancellation of inbound billing on shipments made outbound under local rates. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (359).

Sugar, Crockett, Cal., to Goldfield, Nev., was erroneously billed via route over which higher rate applied, and circumstances do not constitute a case of misrouting. *Goldfield Cases*, 360 (378).

BILLING AND REBILLING.

Any plan of first billing to an intermediate point an interstate shipment in order to defeat the interstate rate is unlawful. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.* 271 (276).

BILLS OF LADING. See also THROUGH BILLS OF LADING.

If rail carriers exchange bills of lading, it is discriminatory for them to refuse like recognition of water lines. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (73).

Shipper elected to accept, which must be considered as an acceptance of its conditions. *Larkin Co. v. E. & W. Transp. Co.* 106 (109).

Provision relative to freight charges on shipments made to replace previous shipments lost has resulted in an unlawful practice. *Id.* (110).

"Shipper's load and count" provision not found unreasonable or unlawful, but shipper is not denied his right to an unqualified receipt in any case where delivery is tendered to carrier at public stations. *Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co.* 511 (513).

BLANKET RATES. *See also* GROUP RATES; ZONE RATES.

Increase in rates from southwestern blanket not justified. Lumber Rates from Points in Arkansas, 102.

Carriers have established extensive blankets both as to California points of origin and Arizona points of destination. Arizona Corp. Comm. v. A., T. & S. F. Ry. Co. 158 (162).

Rates are blanketed over Texas common-point territory from defined territories. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (297).

Albuquerque rates prescribed as maxima to blanketed points from Pastura to Alamobordo. Id. (309).

When the junction rate is applied from points on the industrial line the rate structure in general territory is based on a blanket or group system. Second Industrial Railways Case, 596 (604).

History of rates from southwestern yellow-pine blanket. Rates on Lumber from Southern Points, 652 (655).

Rates of 16 and 18 cents applied as blanket rates from all territory between Arkansas River and Gulf of Mexico, creating a blanket about 400 miles long and 300 miles wide. Id. (656).

Carriers, having disregarded distances of several hundreds of miles in creating and maintaining a blanket, should not be heard to say that gradual southward movement of the center of production is in itself justification for increased rates. Id. (659).

Proposed increases in yellow-pine blanket rates, not justified. Id. (661, 665).

The contention that the Arkansas River constitutes a natural line of demarcation between blanketed territory and region to north from which lower rates are published is not without merit. Id. (663).

The yellow-pine blanket rate had been accepted as reasonable, and there followed the conclusion that increases on hardwood were proper where yellow-pine rate was observed as maximum. Northbound Rates on Hardwood, 708 (710).

BOAT LINES.

P. Co. and C. P. Ry. Co. permitted to continue joint interest in and operation of. P. Co. Operation of Pennsylvania-Ontario Transp. Co. 47.

Carriers permitted to continue interest in and operation of Ontario Car Ferry Co. G. T. Ry. Co. of Canada Operation of Car Ferry Co. 49; B. R. & P. Ry. Co. Operation of Car Ferry Co. 52.

Petitioner permitted to continue its interest in Grand Trunk-Milwaukee Car Ferry Co. G. T. W. Ry. Co. Operation of Car Ferry Co. 54.

Continuation of service by water from California loading ports to States of Oregon and Washington, denied. S. P. Co. Ownership of Oil Steamers, 77.

Service to Alaska and Hawaiian Islands continued. Id. (81).

Existing specified service by water is being operated in interest of public, etc. A. A. R. R. Co. Operation of Car-Ferry Boats, 83 (85).

Existing services by water on Lake Erie and Lake Michigan are advantageous and continuance thereof permitted. P. M. and B. & L. E. R. R. Co's. Operation of Car-Ferry Boats, 86.

Application to continue operation of steamship line, granted. O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co. 165.

Nothing said herein is to be construed as a finding that the O. S. L. R. R. Co's. interest is not in violation of section 5. Id. (168).

Application to continue operation of boat line, granted. S. P. Co. Steamboats on Sacramento River, 174.

Service performed by each of the six steamboats shown to be popular and dependable. Id. (176).

BOAT LINES—Continued.

Authority to continue interest in and operation of boat line granted. *Erie R. R. Co. Operation of Lake Keuka Nav. Co.* 212.

Service by water is being operated in interest of public. *C. & E. R. R. Co. Ownership of Water Equipment*, 218 (220).

Petitioners authorized to continue ownership and operation of car-ferry boats between Mackinaw City and St. Ignace, Mich. *Joint Ownership and Operation of Mackinac Transp. Co.* 229 (230).

Petitioner permitted to continue operation of boat line on Sacramento River and connecting waters. *S. P. Co. Ownership of Stock in Transp. Co.* 648.

BOTH DIRECTIONS.

Carload earnings on commodities involved exceed earnings on citrus fruit moving in opposite direction. *Westbound Transcontinental Refrigeration Charges*, 140 (142-143).

Conditions not so favorable for eastbound traffic as to volume, loading, etc., as obtains westbound, and difference in service justifies a somewhat higher rate eastbound. *Eastbound Transcontinental Cotton Rates*, 248 (252).

Class and commodity rates between Shreveport and eastern Texas points prescribed. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (477, 479).

To justify increased rates northbound, respondents dwelt upon the heavy movement of empty cars southbound; which lessens the force of their contention that southbound rates should be higher because of light traffic. *Rates on Lumber from Southern Points*, 652 (676).

BRANCH LINES.

Leadville and Aspen, Colo., are on branch lines of the D. & R. G. *Montrose & Delta Counties Freight Rate Assn. v. D. & R. G. R. R. Co.* 409 (410).

BREACH OF CONTRACT. See CONTRACT.**BRIDGE TOLL.**

In fixing divisions, two lines south of Sellersburg are to have an arbitrary allowance before prorating, on account of bridge and terminal conditions, same to be included in their minimum division and not added to it. *Louisville Board of Trade. v. I., C. & S. T. Co.* 640 (643).

On lumber at Ohio River crossings, on local and through business. *Rates on Lumber from Southern Points*, 652 (680).

It is not shown that less than 1 cent per 100 pounds for bridge toll would be reasonable. *Id.* (682).

BRIDGES. See also TERMINAL RAILROAD ASSOCIATION.

Eads bridge and Merchants bridge between St. Louis and East St. Louis. *St. Louis Terminal Case*, 453 (456).

Cost of operating over Ohio River bridges. *Rates on Lumber from Southern Points*, 652 (680).

BULKY ARTICLES.

Agricultural implements are quite bulky. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (92).

In official and western classifications are rules which require shippers to load and unload articles difficult to handle. *Trap or Ferry Car Service Charges*, 516 (523).

BURDEN OF PROOF.

A rate may be increased or service curtailed; but if such action is challenged carriers must bear the burden of showing that the new rate or service is reasonable. *Rates in Chicago Switching District*, 234 (242).

BURNT DISTRICT OF TEXAS.

Described. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (303).

CAR. *See* EQUIPMENT; TANK CARS.

CAR AND CAR-MILE EARNINGS. *See* AVERAGES; EARNINGS.

CAR DISTRIBUTION.

All cars, whether owned or leased, must be distributed without discrimination.

Pennsylvania Paraffine Works v. P. R. R. Co. 179 (193).

CAR FERRY.

Provides a short route for coal to Canada over Lake Erie. *P. Co. Operation of Pennsylvania-Ontario Transp. Co.* 47 (48).

Ferry line relieves congestion and provides quicker transportation. *G. T. Ry. Co. of Canada Operation of Car Ferry Co.* 49 (50, 51); *B. R. & P. Ry. Co. Operation of Car Ferry Co.* 52 (53).

Fares via ferry line are same as via other boat lines, and freight rates are same as all-rail rates. *G. T. Ry. Co. of Canada Operation of Car Ferry Co.* 49 (50); *B. R. & P. Ry. Co. Operation of Car Ferry Co.* 52 (53).

Car ferries operating across Lake Michigan. *G. T. W. Ry. Co. Operation of Car Ferry Co.* 54 (57).

Routes from west bank ports of Lake Michigan via car ferries and petitioner's rails furnish an expedited service. *A. A. R. R. Co. Operation of Car-Ferry Boats*, 83 (85).

Ferryboats are able to furnish an expedited service and are operated in interest of the public. *P. M. and B. & L. E. R. R. Cos.' Operation of Car-Ferry Boats*, 86 (89).

Petitioners authorized to continue operation of car-ferry boats between Mackinaw City and St. Ignace, Mich. *Joint Ownership and Operation of Mackinac Transp. Co.* 229 (230).

CAR FITTING. *See also* ALLOWANCES; GRAIN DOORS; STAKING CARS.

If carrier furnishes nothing but loose boards at one point and at another furnishes sectional doors, lath, paper, or burlap, unlawful discrimination results. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (65).

Coopering and fitting cars to transport grain from elevators at terminal points is not unduly prejudicial to shippers from country elevators. *Id.* (66).

New rule applicable to millet seed or flaxseed loaded in cars lined at shippers' expense to prevent leakage, approved. *Western Trunk Line Rules*, 554 (578).

CAR FURNISHING.

Average time in which car can be furnished in lieu of one refused is about 48 hours. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (63).

Obligation of carrier to promptly furnish suitable car. *Id.* (64).

Whether or not a particular request is reasonable is a matter for this Commission to decide in each particular case. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (187).

The extent of defendant's obligation at common law is not determinative of its extent under the statute. *Id.* (187).

Commission required to decide whether or not in specific cases carriers have furnished adequate facilities upon reasonable request. *Id.* (189).

Responsibility to shipper rests upon originating line; but in case of through routes the obligation is joint upon the carriers therein. *Id.* (194).

Defendant will be required to furnish tank cars in sufficient number to move complainants' normal production. *Id.* (194).

CAR NUMBER.

In bill of lading was erroneously given as 20260. Correct number was 70260, and appeared in notice sent. *Este Co. v. A. O. L. R. R. Co.*, 469.

CAR SHORTAGE.

In seasons of, shipper accepts any car furnished and repairs it if necessary in preference to waiting. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.*, 60 (62).

CAR SPOTTING. *See SPOTTING CARS.***CARETAKER.**

No action by Commission necessary regarding rules governing free return transportation of attendants. *Miller & Co. v. N. P. Ry. Co.*, 154 (155).

CARLOAD AND LESS THAN CARLOAD.

Carload rates on roofing and building paper to Oklahoma points found unreasonable. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3.

Former order with respect to carload rates not modified. *Commodity Rates to Pacific Coast Terminals*, 13 (18).

Former order modified to permit maintenance of a maximum less-than-carload rate to intermediate points in certain instances. *Id.* (20).

In Arkansas the spread between carload and less-than-carload rates is less in intrastate rates than in interstate rates. *Mixed Carloads of Lime, Cement, and Plaster*, 124 (125).

California-Arizona rates on sugar and sirup in straight carloads, not unreasonable to a greater extent than amounts of reductions since made. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (161).

Handling of freight by steamship and rail lines at San Francisco. *S. P. Co. Steamboats on Sacramento River*, 174 (177).

Transcontinental rates to Willamette Valley, Oreg., etc., found unreasonable. *Gile & Co. v. S. P. Co.* 319.

Defendant concedes that there should be a difference between c. l. and l. c. l. rates on wood pulp. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323 (325).

Official and southern classification ratings on l. c. l. shipments of lead stereotype plates, not unreasonable. *Western Newspaper Union v. A. & R. R. R. Co.* 326 (329).

Rates on various commodities to Colorado points. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409 (411).

Carload rates are usually lower than less-than-carload rates on traffic handled at St. Louis. *St. Louis Terminal Case*, 453 (463).

Traffic moving under any-quantity rates, but in carloads, has the distinguishing feature of having less-than-carload rates. *Trap or Ferry Car Service Charges*, 516 (524).

Cancellation of rule governing in cases where two or more carload consignments may be placed in one car, and l. c. l. shipments assembled into carloads, approved. *Western Trunk Line Rules*, 554 (576).

CARMACK AMENDMENT.

Purpose of, was to make initial carrier liable for any loss, damage, or injury to property caused by it, or by other lines over which property might pass. *Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co.*, 511 (512).

CAROLINA TERRITORY.

Described. *City of Danville, Va., v. S. Ry. Co.*, 430 (431).

CARS OFF LINE.

Commission sees no particular hardship to defendant arising out of necessity of allowing its equipment to move beyond its lines. *Pennsylvania Paraffine Works v. P. R. R. Co.*, 179 (193).

The Santa Fe refuses to permit its cars loaded with hay to be taken off its line onto the Texas & Pacific. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.*, 292 (310).

CARTAGE.

For cartage by transfer companies there is no fixed rate, charges being controlled by competitive conditions. *St. Louis Terminal Case*, 453 (458).

CHARACTERISTICS OF COMMODITY. *See also* **VALUE.**

Lumber loads heavily, is moved with slight risk, does not require expedited service, and is a low-rated commodity. *Lumber Rates from Points in Arkansas*, 102 (104).

Sawed and dressed stone and marble must be loaded in box cars, detain equipment longer, are more liable to damage, and require more care in transportation.

Rates on Stone and Marble from Chicago and Peoria, 390 (391).

CHICAGO SWITCHING DISTRICT. *See also* **LOWREY TARIFF.**

Chicago rates apply generally to and from all points within. *Rates in Chicago Switching District*, 234 (239).

CIRCUITOUS ROUTES.

The Northern Pacific not required to meet via its circuitous route the rates on lumber over shorter lines from Spokane, etc., Wash., to Butte, Mont. *Wilson-Leuthold Lbr. Co. v. C., M. & St. P. Ry. Co.* 146 (148).

All-rail routes are very circuitous and probability of actual competition with boats is very remote. *Joint Ownership and Operation of Mackinac Transp. Co.*, 229 (230).

The low intrastate rates give an advantage to the circuitous route via St. Louis over route via Memphis. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (346).

CIRCUMSTANCES AND CONDITIONS.

At Charleston not so dissimilar as to warrant a preference to the route through Norfolk. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (490).

CLAIMS.

Carriers should adjust all pending claims of character here involved, with respect to lost shipments, upon their merits, etc. *Larkin Co. v. E. & W. Transp. Co.* 106 (110).

It is not shown definitely to what extent claims for damages to sheep exceed claims on hogs. *Rates on Hogs*, 627 (629).

CLASS AND COMMODITY RATES. *See also* **CLASS RATES; COMMODITY RATES.**

St. Louis and Kansas City to Oklahoma points compared with rates to various other points. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (5).

Limitations in rates to intermediate points may well vary with the class to which the commodity belongs. *Commodity Rates to Pacific Coast Terminals*, 13 (19).

The presumption that a commodity rate higher than the class rate which would otherwise apply is unreasonable is predicated on the antecedent presumption that the class rate is fixed at the highest reasonable figure. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (34).

Class K rates on agricultural implements from Peoria did not apply from Canton, Ill., which now takes rates higher than commodity rates formerly in effect. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (91).

Cancellation of commodity rates applicable to mixed carloads of sugar and sirup has resulted in increased rates. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (161).

Joint class rates on coarse grain which exceeded aggregate of intermediate commodity rates were unlawful. *Board of Trade of Kansas City v. O., M. & St. P. Ry. Co.* 208.

Complaints involving proportional rates between Des Moines and Mississippi River on shipments to or from points east of Indiana-Illinois state line dismissed without prejudice. *Des Moines Commodity Rates*, 281.

CLASS AND COMMODITY RATES—Continued.

Commodity rates higher than class rates in certain instances. *Id.* (283, 285).

Rates on named classes and commodities from Kansas City, St. Louis, and Chicago to points in New Mexico found unreasonable and rates prescribed. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292.

To Albuquerque, N. Mex., prescribed. *Id.* (309).

Transcontinental commodity rates to Willamette Valley, Oreg., found unreasonable to extent they exceed class rates prescribed. *Gile & Co. v. S. P. Co.* 319 (322).

Rates on classes and certain commodities from Missouri River points to points in Colorado, not unreasonable. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393.

Rates on classes and certain commodities from Los Angeles and San Francisco, Cal., etc., to Colorado points involved, not unreasonable. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409.

Commodity rates need not always bear a fixed relation to class rates, even as between competing points. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (637).

CLASS RATES.

Double first-class rating on grapes in baskets, less than carloads, found justified. *Blackburn-Warden Co. v. I. C. R. R. Co.* 58.

Reparation awarded on motorcycles, Armory, Mass., to Portland, Oreg., and Seattle, Wash., on basis of first-class rate. *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.* 120.

Cast-iron pipe generally moves in territory involved at class A rates. *City of Charlotte, N. C., v. S. Ry. Co.* 128 (129).

To additional Iowa destinations authorized. *Proportional Class Rates to Iowa Points*, 278.

Cresote oil takes fourth class except in Iowa and Illinois classifications. *Des Moines Commodity Rates*, 281 (287).

Cherry lumber should not exceed fourth class. *Id.* (288).

Bottles, glass jars, etc., are rated fifth class. *Id.* (289).

Rate from Chicago on leather, in question should not exceed second class. *Id.* (290).

Furniture takes a wide range of class rates. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (308).

The alleged "high plane of the class rates" can not be taken into consideration in determining reasonableness of rates on grain and grain products. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (354).

To Danville and Virginia cities from various points in west, east, and south, shown. *City of Danville, Va., v. S. Ry. Co.* 430 (432).

Danville should be given rates from Cincinnati and Louisville on grain and products 1 cent lower than class D and on flour 4 cents per barrel lower than class F. *Id.* (440).

Distance scale of class rates prescribed as maxima between points in eastern Texas and Shreveport. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (476).

CLASSIFICATION.

Western rates roofing and building paper the same, fifth class in straight or mixed carloads, minimum 30,000 pounds. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (4).

Official rates cotton piece goods rule 25, which prescribes 15 per cent less than second class, but not lower than third class. *Rates on Cotton Piece Goods*, 41 (42).

CLASSIFICATION—Continued.

Official and western l. c. l. ratings on grapes in baskets are first class; but ratings in one territory are not conclusive of reasonableness or unreasonableness of ratings in another, and double first class in southern, justified. *Blackburn-Warden Co. v. I. C. R. R. Co.* 58 (59).

Motorcycles rated first class in western and no order for future necessary. *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.* 120 (122).

Practice of shipping mixed carloads of lime and cement not as common in western as elsewhere. *Mixed Carloads of Lime, Cement, and Plaster*, 124 (125).

Broom handles rated class A in western. *Des Moines Commodity Rates*, 281 (291).

Fourth-class rating on creosote oil in Iowa and Illinois classifications are exceptions to the general classification, being rated third class in western, official, and southern. *Id.* (287).

Cherry lumber rated fourth class in Iowa, Illinois, official, and southern classifications. *Id.* (288).

The l. c. l. rating on lead stereotype plates, new and old, in official and southern territories not unreasonable. *Western Newspaper Union v. A. & R. R. R. Co.* 326.

The mere fact that ratings on stereotype plates in western are different from those in official and southern does not establish the unreasonableness of either. *Id.* (328).

Western rating on feed or litter carriers in less than carloads, minimum weights, etc., not found unreasonable. *Louden Machinery Co. v. A., T. & S. F. Ry. Co.* 383.

Comparisons made between ratings on feed and litter carriers in western, official, southern, Illinois, and Iowa classifications are ineffectual. Particular ratings in one are not conclusive proof that higher ratings in another are unreasonable. *Id.* (384-385).

Value, though important, is not the controlling element in. *Id.* (384).

That articles are used either in preparing the soil or in planting, harvesting, or storing crops is said to be the real criterion of classification as agricultural implements. *Id.* (386).

In western apples in carloads are rated fifth class both in packages and in bulk.

Montrose & Delta Counties Freight Rate Assn. v. D. & R. G. R. R. Co. 400 (402).

Rates from west to Danville are governed by southern, whereas those to Virginia cities are governed by official. *City of Danville, Va., v. S. Ry. Co.* 430 (435).

The Texas classification is, on many articles, more liberal to shipper than is western. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (478).

Justice demands that same classification shall apply to all, and consequently western shall govern on traffic via defendants' lines from points in eastern Texas toward Shreveport. *Id.* (478).

In official and western are rules which require shippers to load and unload heavy and bulky commodities difficult to handle. *Trap or Ferry Car Service Charges*, 516 (523).

Change in rating on l. c. l. shipments of harvester machines, set up, from first class to double first class, justified. *Western Trunk Line Rules*, 554 (558).

Rule providing for application of brick rates on cement or concrete building or paving blocks, canceled. *Id.* (559).

Rule providing for cigarette papers with smoking tobacco at tobacco rating, canceled. *Id.* (561-562).

CLASSIFICATION—Continued.

Rule making separate charge for fuel, water, supplies, and wages of employees for locomotives, logging or industrial, moving under their own steam, approved. Id. (562).

Transfer of flax, moss, tow, and shives, and thrashed straw to commodity tariffs at hay rates and minima, but canceling provision for unthrashed straw, approved. Id. (562-563).

Starch and dextrine may be excepted from list of products made subject to corn rates; live-stock feed added. Id. (565).

Rule providing for agricultural implement rates and minima on grain-weighing machines may be eliminated upon revision of western. Id. (565).

Production of liquozone has been stopped, and rule should be eliminated. Id. (565).

Rule providing fourth-class rates on paper roofing, l. c. l., and rule governing pine cones in boxes, barrels, or sacks, may be canceled. Id. (566).

Cancellation of class B rates on pipe, iron or steel, not justified. Id. (566).

Rule providing class D rates, minimum 30,000 pounds, on silos, knocked down, may be eliminated. Id. (568).

Cancellation of rule governing iron and steel sleigh or sled knees, c. l. and l. c. l., applying instead the western l. c. l. ratings, approved. Id. (569).

Elimination of rules providing third-class rates on tents and fixtures, graduated minima, and class A rates on secondhand thrashing outfits, authorized. Id. (570).

Revised rule providing for fourth-class rates on twine may be published. Id. (571).

Cancellation of rule that wire rates will not apply on check-rower wire, approved. Id. (571).

Attention directed to views of the Commission respecting publicity of proposed changes and method of classification procedure. Id. (579).

Under western petroleum and its products ordinarily take fifth class. *Pacific Creamery Co. v. S. P. Co.* 586 (594).

Western fourth-class rating applies on coconut oil, New Orleans to Kansas City; southern fifth-class rating to St. Louis, Cincinnati, and Chicago. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (636).

CLEANING CARS.

It is not unreasonable to expect shipper to do a reasonable amount of. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (64).

COAL MINING.

Cost of mining thin-seam coal is from 12 to 14 cents a ton greater than cost of mining thick-seam coal. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (95).

COMBINATION RATES.

Combination rates from Inman, Kans., to southwestern Missouri points, prescribed. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (200).

Memphis dealers can not participate in grain from southwestern producing territory except upon payment of. *Memphis Grain & Hay Asso. v. I. O. R. R. Co.* 315 (317).

Combinations of interstate rates on St. Louis are higher than combinations on Memphis, but intrastate rates to St. Louis plus rates beyond make lower combinations. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (346).

Combination rate on sugar, Crockett, Cal., to Goldfield, Nev., erroneously billed via route taking higher rate and involving a four-line haul, held not unreasonable. *Goldfield Cases*, 360 (378).

COMMERCIAL AND ECONOMIC CONDITIONS.

Relation in which by geographical location and commercial conditions Sioux City is naturally placed, not disturbed. Lumber Rates from Points in Arkansas, 102 (105).

Commission can not attempt, in the exercise of powers conferred by the act it administers, to overcome or modify. Alpha Portland Cement Co. v. B. & O. R. R. Co. 414 (421).

COMMODITIES CLAUSE.

No finding herein that carrier in owning controlling interest in Associated Oil Company and carrying its own oil is not within prohibition of commodities clause. S. P. Co. Ownership of Oil Steamers, 77 (82).

Certain lines may be operating in violation of, but proceedings thereunder are under the jurisdiction of the Department of Justice. Second Industrial Railways Case, 596 (604).

COMMODITY RATES.

Carriers required to name rates and minimum upon basis of the highest rated commodity contained in mixture. Mixed Carloads of Lime, Cement, and Plaster, 124.

On agricultural implements, asphalt, cement, bottles, mixed paints, and paper articles from Chicago require revision, but order not issued at this time. Des Moines Commodity Rates, 281 (285).

St. Louis and Chicago to all New Mexico points should not exceed rates from Kansas City by more than 10 and 20 cents, respectively. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (309).

Between Shreveport and eastern Texas points should not exceed, distance considered, the corresponding class rates herein prescribed. R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co. 472 (479).

Should be published from eastern oil fields to Arizona which shall bear proper relation, scaled on a distance basis, to those from California. Pacific Creamery Co. v. S. P. Co. 586 (593).

COMMON CARRIER.

Application can be disposed of without deciding whether or not steamers are common carriers. S. P. Co. Ownership of Oil Steamers, 77 (79).

Having become a common carrier between certain points, petitioner must accept and perform its common-carrier duties with regard to oil transportation between other points. Id. (79).

It is not contended that tunnel company or lighterage company are not common carriers subject to the act. Rates in Chicago Switching District, 234 (237, 238).

The status under the act of a carrier by railroad is not determined by the length or width of its railroad. Id. (238).

Court found the Duluth & Northern Minnesota Railway was a common carrier subject to the act. Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co. 500 (501).

"COMPANY MATERIAL." See also FREE TRANSPORTATION.

Oil is not for petitioner's use in operation of its lines, and is not what is commonly known as. S. P. Co. Ownership of Oil Steamers, 77 (81).

COMPARATIVE RATES.

Rates to Muskogee, Okla., are relatively higher on roofing and building paper than on other commodities. Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co. 3 (5).

Rates on sea-island cotton compared with rates on fertilizer and other commodities. Brantley Co. v. A. C. L. R. R. Co. 21 (23).

COMPARATIVE RATES—Continued.

No evidence that grapes in baskets are rated higher than other similar articles
Blackburn-Warden Co. v. I. C. R. R. Co. 58 (59).

Cedar shingles and cedar lumber rates, compared. R. R. Comrs. of Iowa v. A.,
T. & S. F. Ry. Co. 111 (112).

Relationship between grain and grain products preserved. Dewey Bros. Co. v.
P., C., C. & St. L. Ry. Co. 135 (139).

Box shooks usually take lumber rates. California Pine Box & Lumber Co. v.
A., T. & S. F. Ry. Co. 257 (260).

Comparisons of earnings on various commodities are not helpful in determining
reasonableness of rates on furniture in mixed carloads to Pacific coast. Furni-
ture Mfrs. Asso. v. A. A. R. R. Co. 262 (265).

New stereotype plates compared with other commodities listed as first class; but
relation as to character, use, bulk, weight, tonnage, or volume, risk, cost of
carriage, and controlling competition is not shown. Western Newspaper Union
v. A. & R. R. R. Co. 326 (328).

Admittedly there is no competition between certain iron articles, etc., and lum-
ber. Haskew Lumber Co. v. N., C. & St. L. Ry. 333 (336).

It is not shown that agricultural implements named are used for same purposes as,
or compete with, feed and litter carriers. Loudon Machinery Co. v. A., T. &
S. F. Ry. Co. 383 (386).

Rate on sawed and dressed stone and marble should be higher than that on rough
stone and marble. Rates on Stone and Marble from Chicago and Peoria, 390
(392).

Record does not warrant an order requiring maintenance of rates on low-grade
apples in bulk lower than on apples in packages. Montrose & Delta Counties
Freight Rate Asso. v. D. & R. G. R. R. Co. 400 (403).

Question of establishment of lower rates on cull apples than on boxed or bulk
apples merits further consideration by defendants. Id. (403).

That on one commodity moving outbound several points constitute a single
group while on another moving inbound such points are divided into one or
more groups is not convincing even though the second commodity is used in
manufacture of the first. Alpha Portland Cement Co. v. B. & O. R. R. Co.
414 (421).

Competitive conditions via Duluth, Minn., and lakes have not justified the lower
rate on flour than on wheat. Stock & Sons v. C., M. & St. P. Ry. Co. 481 (483).

Cancellation of rule relating to flour from Beloit, Wis., to Illinois points, leaving
grain and grain products rates to apply, approved. Western Trunk Line Rules,
554 (563).

Rule providing for soft lump coal rates and minima on foundry facings may be
canceled. Id. (563).

Changes in rules with respect to lumber and articles taking lumber rates or differ-
entials over lumber rates approved. Id. (565).

Rates on distillate shall be not more than 80 per cent of rates on refined oils.
Pacific Creamery Co. v. S. P. Co. 586 (595).

Proposed rate on hogs 80 per cent of rate on cattle, Utah to California, justified.
Rates on Hogs, 627 (628).

Rates on sheep and hogs compared. Id. (628).

Logs usually take same rate as rough heading, staves, and stave bolts. Brenner
Lumber Co. v. M. L. & T. R. R. & S. S. Co. 630 (632).

Rates and values on imported oils, domestic molasses other than blackstrap, and
imported wire, compared. Peet Bros. Mfg. Co. v. I. C. R. R. Co. 634 (636).

COMPARATIVE RATES—Continued.

Where rates on hardwoods, other than cottonwood and gum, are lower than rates on yellow pine, increases greater than 1 cent will be permitted, with pine rates as maximum. Rates on Lumber from Southern Points, 652 (686).

Hardwood rates from Memphis and Helena to west, including gum and cottonwood, will not exceed rates on yellow pine. Id. (689).

Cottonwood and gum lumber not entitled to special rates, and hardwood rates will be observed as maxima. Id. (690, 693, 694).

No transportation reasons shown for according lower rates to hardwoods than to yellow pine. Id. (707).

In no case should rates on cottonwood and gum, or other hardwoods, exceed rates on yellow pine. Id. (707).

Hardwood and yellow pine. Northbound Rates on Hardwood, 708 (710).

COMPELLED RATES.

Rate of 13 cents on lumber, Chattanooga to Cincinnati, via the N. C. & St. L. Ry. Haskew Lumber Co. v. N., C. & St. L. Ry. 333 (335).

COMPENSATORY RATES.

If a transportation charge be greater than a reasonable compensation for services rendered, considering all circumstances, such charge is unreasonable, no matter who may benefit by reason of the reduction thereof. Pacific Creamery Co. v. S. P. Co. 586 (591).

COMPETING LINES.

The Rock Island permitted to meet competition of more direct route to Burlington. Proportional Class Rates to Iowa Points, 278 (280).

Both Tonopah and Goldfield are served by competing routes. Goldfield Cases, 360 (363).

COMPETITION.**Carriers:**

Carrier participating in joint rates to point beyond its line may compete with another carrier operating thereto. S. P. Co. Ownership of Oil Steamers, 77 (80).

Transportation activities in and rates to and from Chicago are subject to conditions of intense competition. Rates in Chicago Switching District, 234 (241).

The policy of Congress has been and is to encourage competition between. Id. (241).

Commodities:

Admittedly there is no competition between certain iron articles, etc., and lumber. Haskew Lumber Co. v. N., C. & St. L. Ry. 333 (336).

Import and Domestic:

Imported product must take lower rates in order to compete with domestic. Louisiana Sugar Planters' Assn. v. I. C. R. R. Co. 253 (254).

In General:

It might be that competition has influenced establishment of an adjustment on one commodity which it would not be just to carriers to require on another. Alpha Portland Cement Co. v. B. & O. R. R. Co. 414 (421).

Competition played its part in establishment and maintenance of the service. Trap or Ferry Car Service Charges, 516 (521).

Local and Export Traffic:

No competition exists between. Shanda v. S. A. L. Ry. 214 (215).

COMPETITION—Continued.

Market:

Oklahoma points are in competition with Kansas City, Coffeyville, Joplin, and Fort Smith, and with each other in the distribution of roofing and building paper. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (6, 7).

In marketing coke on Pacific coast complainants meet competition from Birmingham, Ala., district, and from coke-producing points in Virginia and Pennsylvania. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10 (11).

Competition at Pacific coast of coke from Europe. *Id.* (12).

Competition in ex-lake grain from Buffalo is as influential at Middletown, Conn., as at Hartford and other points. *Meech & Stoddard v. G. T. Ry. of Can.* 39 (40).

Grain from terminal points not sold in competition with that of country elevator. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (66).

Coal produced in both thick and thin vein mines is actively competitive. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (95).

Foundries located at Virginia cities or eastern points compete at Atlanta with pipe from Alabama and Tennessee. *City of Charlotte, N. C., v. S. Ry. Co.* 128 (132).

It is difficult to sell hay from team tracks of the Wabash in competition with that sold at points of delivery on other railroads. *Rates on Hay to Chicago*, 150 (151).

To west and southwest of Chicago, the Fort Dodge producer ships on more favorable rates than his Grand Rapids competitor. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (206).

The "enormous new modern mines with their great tonnage in Brazil-Clinton group" are taking away from the Sullivan-Linton group the market they formerly enjoyed in Chicago. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (226).

Indiana mines meet competition of Kentucky coal fields, Illinois coals, and Ohio and other eastern coals. *Id.* (227-228).

Coffeyville and Independence are in competition with other designated points in southeastern Kansas. *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.* 231 (232).

El Paso jobbers compete with jobbers at other Rio Grande crossings in the sale of goods in Mexico. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (297).

Commission would not be justified in granting fourth section relief merely because traffic moved from east or from Europe via Vera Cruz or Tampico to northern Mexico points reached by El Paso jobbers. *Id.* (300).

There is little competition between Willamette Valley and points north of Portland. *Gile & Co. v. S. P. Co.* 319 (322).

In order to compete with Chicago, St. Louis rates must not be more than 3 cents higher to c. f. a. and trunk-line territories. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (348).

Between dealers located on two lines of railroad is of itself insufficient to warrant an order requiring carriers to equalize their rates. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381 (382).

To New Orleans Virginia cities rates are generally carried as maxima from Carolina territory to enable manufacturers to market their products in competition with other sections of the country. *City of Danville, Va., v. S. Ry. Co.* 430 (437).

COMPETITION—Continued.**Market—Continued.**

A differential in excess of one-fourth cent would render it impossible for outer zone to compete in the Chicago market with inner zone. Sand and Gravel Rates from Wisconsin Points to Chicago, 467 (468).

Complainant at Hillsdale and Litchfield, Mich., finds in the Minneapolis miller its chief competitor in the sale of spring wheat flour. Stock & Sons v. C., M. & St. P. Ry. Co. 481 (483).

Grain received at Milwaukee ultimately goes eastward in competition with grain passing through Minneapolis. Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co. 581 (583).

Los Angeles said to be in active competition with San Francisco in shipping packing-house products into San Joaquin Valley. Rates on Hogs, 627 (628).

Record sustains contention that competition with white pine from the North has almost disappeared, the contest having ended in an almost complete victory for yellow pine. Rates on Lumber from Southern Points, 652 (658).

Competition at Kansas City not shown to be so severe as at St. Louis. Id. (661).

Milling points:

Differential between Inman, Kans., and competing milling points prescribed. Enns Milling Co. v. C., R. I. & P. Ry. Co. 197 (200).

Potential:

In mind of Congress that joint through rate arrangements constituted such an all-rail line as brought about a condition of potential competition between railroad and its boat line through Panama Canal. G. T. W. Ry. Co. Operation of Car Ferry Co. 54 (56).

On the Cowlitz River to points on the N. P. north of Kalama said to influence rates to points south of Tacoma. Gile & Co. v. S. P. Co. 319 (322).

It is urged that there is between Chattanooga and South Pittsburg, Tenn., potential, if not actual, competition by water. Haskew Lumber Co. v. N., C. & St. L. Ry. 333 (335).

Route through Wilmington is not influential, but is potential. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (489).

Rail and boat lines:

Through routes via Buffalo gateway make it possible for petitioners to compete with their boat. P. Co. Operation of Pennsylvania-Ontario Transp. Co. 47 (48).

Through route arrangements make possible competition with ferryboats. G. T. Ry. Co. of Canada Operation of Car Ferry Co. 49 (50); B. R. & P. Ry. Co. Operation of Car Ferry Co. 52 (53).

Car Ferry Co. is in competition with Canada S. S. Co. for passenger business. G. T. Ry. Co. of Canada Operation of Car Ferry Co. 49 (50); B. R. & P. Ry. Co. Operation of Car Ferry Co. 52 (53).

All-rail route is indirect, and probability of active competition between the two routes is remote. G. T. W. Ry. Co. Operation of Car Ferry Co. 54 (56).

Shippers and owners of vessels given use of newest avenue of commerce in free and open competition with rail lines of U. S. S. P. Co. Ownership of Oil Steamers, 77 (80).

By using its rail line to haul its own oil petitioner may compete with its oil steamers. Id. (81).

Participation in paralleling through all-rail rates via Chicago to ports served by boats makes competition possible. A. A. R. R. Co. Operation of Car Ferry Boats, 83 (84).

COMPETITION—Continued.**Rail and boat lines—Continued.**

Petitioners do not compete with ferryboats on Detroit River, but may compete with those on Lake Michigan and with boat on Lake Erie, as they are parties to through routes. *P. M. and B. & L. E. R. R. Cos. Operation of Car Ferry Boats*, 86.

Petitioner competes with its steamers for traffic to San Francisco and San Pedro and is in competition with steamers *Yale* and *Harvard*. *O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co.* 165 (166, 167).

Petitioner, through its ownership in the Central Pacific Ry., competes with its boat line. *S. P. Co. Steamboats on Sacramento River*, 174 (175).

It does not appear that rails of petitioner or its subsidiaries serve ports in common with boats, nor does it join in through rates to said ports. *Erie R. R. Co. Operation of Lake Keuka Nav. Co.* 212 (213).

Petitioners participate in tariffs, publishing switching charges to industries, and may compete with water equipment serving same. *C. & E. R. R. Co. Ownership of Water Equipment*, 218 (219).

Petitioners are parties to through all-rail routes, and it is possible for them to compete with their boats; but routes are circuitous, and probability of actual competition is remote. *Joint Ownership and Operation of Mackinac Transp. Co.*, 229 (230).

Petitioner does compete with boat line on Sacramento River within meaning of the act. *S. P. Co. Ownership of Stock in Transp. Co.* 648 (651).

Railroad:

The Boston & Albany's rates from common points were made in competition with rates of the Boston & Maine. *Rates on Cotton Piece Goods*, 41 (43).

Competing lines from Fort Dodge, Iowa, to Chicago, Ill. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (205).

Rate made by route to Galveston fixed the rate from Texas to California terminals. *Eastbound Transcontinental Cotton Rates*, 248 (250).

Competition between carriers serving markets of production a valid basis for fourth section relief. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (301).

Contention that there is no justification in meeting competition from St. Louis and not from Memphis is without weight unless unjust discrimination arises. *Memphis Grain & Hay Asso. v. I. C. R. R. Co.* 315 (318).

The tendency of grain grown between two lines of railroads is to move toward the line offering the lower rates. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381 (382).

In making rates from Missouri River points to Utah common points defendant meets competition of the U. P. R. R. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393 (394).

Rates from California terminals to Colorado common points said to be compelled by competition with the U. P. R. R. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409 (410).

Creamery, Ariz., is naturally entitled to the effect of competition which should result there by reason of its being served by two systems of railway. *Pacific Creamery Co. v. S. P. Co.* 586 (589).

Water:

When rates to coast cities are lower than to intermediate points because of controlling water competition, every inland point should take rates higher than to port cities. *Commodity Rates to Pacific Coast Terminals*, 13 (17).

COMPETITION—Continued.**Water—Continued.**

Has forced down class rates between New Orleans and c. f. a. territory to a relatively low level; but vegetables are refused rates made on basis of. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (34).

The fact of actual competition of water-and-rail routes, eastern seaboard to El Paso via Galveston and other ports named affords only valid basis for relief. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (298, 301, 307).

In Willamette Valley, Oreg., discussed. *Gile & Co. v. S. P. Co.* 319 (322).

Lynchburg has lower rates from New Orleans than Danville as a result of. *City of Danville, Va., v. S. Ry. Co.* 430 (440).

Eastern lines accept divisions lower than those required by lines not affected by. *Spiegle & Co. v. S. Ry. Co.* 448 (451).

Competitive conditions via Duluth, Minn., and the lakes do not justify the lower rate on flour than on wheat from Minneapolis. *Stock & Sons v. O., M. & St. P. Ry. Co.* 481 (483).

Principle observed in meeting rail competition with respect to factors making up aggregate of intermediate rates should apply to water competition met by a rail line. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (494).

Rates on hardwoods have been depressed by, to a greater extent than rates on pine. Rates on Lumber from Southern Points, 652 (686).

COMPETITIVE CONDITIONS.

By maintaining rates lower than they could be required to publish to meet competitive or other conditions at a particular point, carriers may not thereby discriminate against another point entitled to the same consideration. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (98).

Under which bituminous coal is marketed are such that coal is sold on a very narrow margin, and frequently at a loss. *Monon Coal Co. v. O. & E. I. R. R. Co.* 221 (227).

Are substantially different on tidewater coal, and a comparison with tidewater rates furnishes no basis for a finding of unreasonableness in rates to line points. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (420).

COMPRESSION.

Increases on cotton and cotton linters concentrated and compressed at Alexandria, La., not justified. *Concentration of Cotton at Alexandria, La.* 163.

Proposed withdrawal of compression-in-transit arrangement on cotton from southern California and Arizona, not justified. *Eastbound Transcontinental Cotton Rates*, 248.

Compression in transit is a general practice throughout cotton-producing sections. *Id.* (251).

Commission might agree that compression is a service completely apart from transportation where asked as an original proposition to require the establishment of. *Id.* (252).

CONCENTRATION.

Increases resulting from withdrawal of concentration rates on cotton and cotton linters, not justified. *Concentration of Cotton at Alexandria, La.* 163.

Rules substantially similar to those in effect in Texas have been established at Shreveport to govern concentration of Texas cotton. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (475).

Rates to Shreveport on eastern Texas cotton for concentration no higher than charged on a distance basis to concentration points in eastern Texas, prescribed. *Id.* (480).

CONCURRENCE. *See* **TARIFF.**

CONFERENCE.

Conference between parties in interest suggested, and in event of their failure to agree, an order will be entered. *Des Moines Commodity Rates*, 281 (286).

St. Louis made a definite rate point as the result of, between carriers and Municipal Bridge & Terminal Board. *St. Louis Terminal Case*, 453 (455).

CONFLICTING RATES.

Two tariffs name net rates on logs; but this case is considered as if the earlier had been canceled. *Transit Rates on Logs and Staves at Alexandria, La.*, 169 (170).

CONGRESS.

Commission's recommendation to Congress that carriers be required to furnish steel coaches for passenger traffic is not an admission of its lack of jurisdiction over matters concerning the adequacy of a carrier's equipment. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (188).

Policy of, has been and is to encourage competition between carriers. *Rates in Chicago Switching District*, 234 (241).

CONSOLIDATED SHIPMENTS. *See also* **POOL CARS.**

Proposed rule relative to carload ratings on shipments received in one day from one consignor under one bill of lading, etc., and those consigned to carrier's agents for distribution should conform to western classification rule. *Western Trunk Line Rules*, 554 (575-576).

CONSOLIDATION.

Of the *Las Vegas & Tonopah* and *Bullfrog-Goldfield* railroads to save operating expenses. *Goldfield Cases*, 360 (368).

CONSTRUCTIVE MILEAGE. *See also* **Equated Mileage.**

To South Atlantic ports from New York, Philadelphia, and Baltimore is 250 miles; from Boston, 300 miles; and to Norfolk from Boston, New York, and Baltimore 300, 160, and 100 miles, respectively. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (486).

"CONSTRUCTIVE" STATIONS.

Are undefined points on the west bank of the Mississippi River. *St. Louis Terminal Case*, 453 (458).

On inbound traffic the transfer company there ceases to be agent of the carrier, and at the same instant becomes agent of shipper, and vice versa, on outbound traffic. *Id.* (458, 464).

Constructive receipt and delivery of traffic at undefined points on west bank of Mississippi River found not to be available to all shippers and therefore condemned. *Id.* (465).

CONSUMPTION.

Of gypsum products has increased in 10 years from 100,000 tons to 1,000,000 tons per annum. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (203).

CONTAINERS.

Estimated weights on containers of same and different sizes lack uniformity and must be revised. *New Orleans Shippers' Assn. v. I. C. R. R. Co.* 32 (37).

Grape baskets described and discussed. *Blackburn-Warden Co. v. I. C. R. R. Co.* 58 (59).

CONTRACT.

Action for damages for breach of, beyond jurisdiction of Commission. *McArthur Bros. Co. v. E. P. & S. W. Co.* 30 (31).

Operating agreement between parties interested in car ferry. *P. Co. Operation of Pennsylvania-Ontario Transp. Co.* 47 (48).

CONTRACT—Continued.

The L. & P. B. Ry. is subject to all the tests and control to which other carriers must submit, notwithstanding the terms of any contractual arrangements.

The Tap Line Case, 116 (118).

Difference in cost of but 1 cent a ton will turn a contract for railroad coal. Monon Coal Co. v. C. & E. I. R. R. Co. 221 (227).

Written contracts are not controlling in a consideration of what would be just and reasonable charges or rules governing service. Trap or Ferry Car Service Charges, 516 (526).

COOPERING. See CAR FITTING.**COST OF CONSTRUCTION.**

Tonopah & Tidewater, Las Vegas & Tonopah, Bullfrog-Goldfield, and Tonopah & Goldfield Railroads. Goldfield Cases, 360 (366-368).

COST OF MINING COAL. See COAL MINING; MEASURE OF RATES.**COST OF SERVICE.**

Re-icing-in-transit service is more costly than ordinary refrigeration service and justifies an additional charge. Westbound Transcontinental Refrigeration Charges, 140 (143).

Cost of handling coal traffic, discussed. Monon Coal Co. v. C. & E. I. R. R. Co. 221 (223).

Exhibit showing actual expenses incurred in connection with refrigeration of 98 carloads of deciduous fruit during 1913. Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. 400 (406).

Two estimates of cost of service submitted by B. & O. and P. R. Rs., discussed. Alpha Portland Cement Co. v. B. & O. R. R. Co. 414 (416).

In determining the reasonableness of rates, cost of service is one of the several factors to be considered. Id. (420).

Transportation costs assigned to pulp-wood movement on D. & N. M. Ry. are abnormal. Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co. 500 (509).

Average cost of handling less-than-carload shipments through freight houses is 40 cents per ton, whether brought there by trap cars or drays. Trap or Ferry Car Service Charges, 516 (527).

Table of costs, per car and per 100 pounds, at various cities for trap-car service. Id. (536, 537, 540).

Trap-car service, while it costs more in Chicago than elsewhere, appears to be no more costly than movements of other freight in cars. Id. (543).

The *Industrial Railways Case* rests largely upon the principle of placing the cost of service where it properly belongs. Second Industrial Railways Case, 596 (600).

Cost of spotting cars at larger industries is less per car than at the smaller. Car Spotting Charges, 609 (616).

Ohio River bridges constitute an important item in transportation costs, but there are difficulties which preclude an accurate determination of the cost of hauling one car. Rates on Lumber from Southern Points, 652 (680, 681).

COURTS.

Recourse must be had to courts for satisfaction of consequential damages. Este Co. v. A. C. L. R. R. Co. 469 (471).

CRIMINAL ACTION.

That carriers habitually overcharged complainant's members is a matter for criminal proceeding. New Orleans Shippers' Asso. v. I. O. R. R. Co. 82 (33).

CROSS-COUNTRY DISTANCE. See DISTANCE.

CUMMINS AMENDMENT.

May influence future course of carriers with respect to bill of lading provision as to loss and damage claims. *Larkin Co. v. E. & W. Transp. Co.* 106 (110).

Rule relieving carrier from responsibility for loss due to frost or overheating when protective service is furnished by shipper does not violate the Cummins amendment. *Miller & Co. v. N. P. Ry. Co.* 154 (157).

"Shipper's load and count" provision not such a limitation of carrier's liability as is contemplated by. *Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co.* 511 (513).

Rule providing for free return of accessories used for meats and perishable freight in peddler cars should be in consonance with. *Western Trunk Line Rules*, 554 (568).

CUSTOM.

It is contended that practice, within the meaning of the act, connotes a continued method of operation and not merely a single act; but Commission considers specific cases. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (189).

Commission has never intended to suggest that an additional charge would be proper for services which by long continued custom and usage have been treated as covered by the line-haul rate. *Car Spotting Charges*, 609 (617).

CUSTOMS DUTIES.

Carriers can not be required to offset by rate adjustments the effect of a customs policy declared by Congress. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (421).

DAMAGES. See also PARTIES.

Awarded in certain instances and denied in others where parties were not entitled or there was no proof of damage. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (9).

No proof of damage resulting from discriminatory rate. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10 (12).

Where reparation is sought because of loss of milling-in-transit service due to misrouting, final destination of shipment or its products must be shown to establish fact and amount of. *Gray & Smith v. P. Co.* 25.

No damage shown and no reparation awarded. *Meech & Stoddard v. G. T. Ry. of Can.* 39 (40).

Complainant damaged to extent that through charges on its mill products exceeded the junction point rate on hardwood. *The Tap Line Case*, 116 (118).

Where a shipper has paid an excessive rate, he may recover as reparation the difference between the rate paid and what would have been a reasonable rate at the time. *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.* 120.

Carriers can not be heard to say that reparation should be denied because shipper or consignee from whom an excessive rate has been collected has on that account secured a higher price for the commodity from his purchaser. *Id.* (121).

No reparation will be awarded because rates are not shown to be unreasonable *per se*. *City of Charlotte, N. C., v. S. Ry. Co.* 128 (134).

Rates found unreasonable, damages denied. *Wilson Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146 (149).

Complainant entitled to reparation to extent of difference between freight charges paid and rates herein found reasonable. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (201).

Statement of a single witness that any award made by the Commission would be paid over to the actual shippers is not a sufficient basis for an award of reparation to persons not parties to the record. *Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.* 208 (211).

DAMAGES—Continued.

Awarded on box shooks, Williams to Clifton, Ariz., on account of unreasonable rates. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (261).

Complaints seeking reparation on various shipments to Millers, Goldfield, and Tonopah, Nev., dismissed. *Goldfield Cases*, 360.

Will not be awarded in these cases upon shipments moving under rates which have since been reduced in compliance with Commission's orders. *Des Moines Commodity Rates*, 281 (287).

Reparation awarded on account of wharfage charges on fuel oil handled through pipe line at Port Aransas, Tex. *Magnolia Petroleum Co. v. Channel & Dock Co.* 330 (332).

Complainants charged freight charges back to consignors, are not real parties in interest, and not entitled to reparation. *Bascom-French Co. v. A., T. & S. F. Ry. Co.* 388 (389).

Rate on coal from West Virginia fields to Danville found unreasonable, but reparation denied. *City of Danville, Va., v. S. Ry. Co.* 430 (441).

Complainants not entitled to reparation on lumber handled in transit at Newport, Tenn. *Spiegle & Co. v. S. Ry. Co.* 448 (452).

Recourse must be had to courts for satisfaction of a penalty charge which is in the nature of consequential damages. *Este Co. v. A. C. L. R. R. Co.* 469 (471).

Reparation will be awarded upon filing of stipulation that complainant ultimately bore unlawful demurrage charges and is party damaged. *Id.* (471).

While injunction against Commission's order was in effect, petitioner charged rates which Commission had held unreasonable and will be called upon to pay numerous claims for reparation. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (501).

Reparation denied because showing does not warrant finding that rates have in the past been unreasonable. *Pacific Creamery Co. v. S. P. Co.* 586 (591).

Awarded for failure to observe reconsigning instructions. *Reeves Coal Co. v. P. M. R. R. Co.* 621 (622).

Awarded on account of unreasonable charges resulting from noninclusion of logs in transit service. *Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 630 (632-633).

Reparation will be awarded on cheese which moved during period suspended rates, now held unreasonable, were effective due to the period of suspension having expired. *Echols & Co. v. A. & W. Ry. Co.* 644 (646).

DELAY.

Of over five months in filling an order for cars shows that defendant's equipment did not meet reasonable demands. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (183).

DELIVERY. See also, TEAM-TRACK DELIVERY.

Rates may not be predicated upon character of vehicle from which commodities are delivered on freight platforms or in cars, so long as no additional burden is put upon carriers. *Trap or Ferry Car Service Charges*, 516 (542).

DEMURRAGE.

Consignee failed to receive mailed notice; but carrier's duty was performed when letter was placed in the mail, and demurrage on car of scrap iron was proper. *Ohio Iron & Metal Co. v. E., J. & E. Ry. Co.* 75.

Charges at Pinners Point, Va., on lumber from Lamar, S. C., to Portsmouth, Va., held for payment of freight charges, before delivery to switching line, were unlawful. *Este Co. v. A. C. L. R. R. Co.* 469.

DENSITY OF TRAFFIC.

Increase in density of traffic points rather to decrease than to increase in rates, and tends to sustain reasonableness of present rate. Lumber Rates from Points in Arkansas, 102 (104-105).

Ton-mile earnings not conclusive in determining whether or not rates are low where density of traffic is much larger on one road than on another. Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co. 500 (507).

DEPARTMENT OF COMMERCE AND LABOR.

Report of, shows that prejudice against red-gum lumber has been overcome. Rates on Lumber from Southern Points, 652 (692).

DEPARTMENT OF JUSTICE. See COMMODITIES CLAUSE.**DEPRESSION.**

Opening of new mines in Brazil-Clinton group caused the depression in Sullivan-Linton group. Monon Coal Co. v. C. & E. I. R. R. Co. 221 (225).

Unusual depression in lumber industry due to war in Europe. Rates on Lumber from Southern Points, 652 (691, 693).

So far as the severe depression in the lumber industry may affect rates here involved, no more can be said than was said in second report herein, 32 I. C. O., 521 (528, 529). Northbound Rates on Hardwood, 708 (709).

DESTINATION POINTS.

Tariff failed to name, as required by section 6 and is stricken from Commission's files. Transportation and Disposal of Waste Materials, 337.

DETENTION.

Carriers have provided for reconsigning charge without charge for detention when protective service is furnished by them. Miller & Co. v. N. P. Ry. Co. 154 (156).

DEVELOPMENT.

History of development of coal mines in Indiana and Illinois. Monon Coal Co. v. C. & E. I. R. R. Co. 221 (224, 225).

DEVICE. See also PAPER TRANSACTIONS.

Mere *pro forma* and paper transactions without substance, except as a means of getting through service at less than the lawful rate, held unlawful. Kanotex Refining Co. v. A., T. & S. F. Ry. Co. 271 (276).

For a trunk line carrier to offer its facilities by lease of trackage rights to give an undue advantage to a single shipper is unquestionably such a device as is condemned by the act. Second Industrial Railways Case, 596 (607).

DIFFERENTIALS.

On roofing and building paper, Muskogee has an advantage over Oklahoma City of only 9 cents. The usual difference is 13 cents in favor of Muskogee. Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co. 3 (6).

Rates from territories east of Missouri River to intermediate points may exceed rates from Missouri River by differentials prescribed in former report. Commodity Rates to Pacific Coast Terminals, 13 (18, 20).

Rates on vegetables from New Orleans should not exceed rates from Southport Junction, a suburb, by more than 5 cents. New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (38).

To various points the middle district mines take a differential of 10 cents a ton under the other districts. San Toy Coal Co. v. A., C. & Y. Ry. Co. 93 (94).

Rate to Omaha is 1 cent over Kansas City, and to Sioux City is 3 cents over Omaha. Lumber Rates from Points in Arkansas, 102 (104).

East Radford is not one of the Virginia cities and takes a differential of 2 cents per 100 pounds over Lynchburg. City of Charlotte, N. C., v. S. Ry. Co. 128 (129).

DIFFERENTIALS—Continued.

- No reason why differentials on grain and grain products to Norfolk, Va., should be exceeded on same to main-line points west of and including Bluefield, W. Va. Dewey Bros. Co. v. P., C., C. & St. L. Ry. Co. 135 (138).
- Rates on sugar to Phoenix and Prescott, Ariz., on basis of not more than 5 cents over junction-point rates, prescribed. Arizona Corp. Comm. v. A., T. & S. F. Ry. Co. 158.
- Difference in rates from Inman, Kans., and competing milling points should not exceed $1\frac{1}{2}$ cents. Enns Milling Co. v. C., R. I. & P. Ry. Co. 197 (200).
- The differential on coal to Chicago from mines in Sullivan group of Indiana over Brazil-Clinton district not found unduly discriminatory. Monon Coal Co. v. O. & E. I. R. R. Co. 221 (228).
- Reports of Commission do not warrant the assumption that it has adopted the theory that rates will be readjusted upon a differential basis computed upon basis of ton-mile earnings. Coffeyville Mercantile Co. v. M., K. & T. Ry. Co. 231 (232).
- Rates eastbound fixed 10 cents higher than rates westbound. Eastbound Trans-continental Cotton Rates, 248 (252).
- Rates to El Paso and other Rio Grande crossings are made by adding differentials to common-point rates. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (297).
- Class rates from St. Louis and Chicago to New Mexico points should be made by adding established differentials to rates from Kansas City. Id. (305).
- In order to permit competition with Chicago, St. Louis rates to c. f. a. and trunk line territories must not be more than 3 cents higher than rates from Chicago. Merchants Exchange of St. Louis v. B. & O. R. R. Co. 341 (348).
- There appears to be neither commercial nor transportation necessity for establishment of a differential between slack and other sizes of bituminous coal. Alpha Portland Cement Co. v. B. & O. R. R. Co. 414 (422).
- Used in making rates to Danville and Virginia cities from Chicago, St. Louis, and Buffalo-Pittsburgh zone. City of Danville, Va., v. S. Ry. Co. 430 (435).
- There are differentials at Danville in favor of water-and-rail routes. Id. (437).
- Rates from outer zone points should not exceed rates from inner zone by more than one-fourth cent. Sand and Gravel Rates from Wisconsin Points to Chicago, 467 (468).
- Rates from north to south Atlantic ports are made differentials over or under the New York rate. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (487).
- Complaint seeking to obtain increased differences between rates over circuitous and direct routes through subtraction from rates to Milwaukee via Minneapolis of differentials based on mileage, dismissed. Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co. 581 (583).
- New circular makes clear that certain articles made of valuable woods will take differentials higher than when made of common woods. Western Trunk Line Rules, 554 (565).
- The Southern Ry. has no interest in the differential to be maintained between outer and inner groups. Coal Rates from Illinois Mines to Omaha, 623 (626).
- The differential for oils involved from Gulf ports under Atlantic ports has not diverted any considerable tonnage to the Gulf ports. Peet Bros. Mfg. Co. v. I. C. R. R. Co. 634 (637).
- Class and commodity rates from Wisconsin and Minnesota territorial rate groups to the southwest are made by adding differentials to rates applicable from St. Louis and Kansas City, which relation will not be disturbed. Echols & Co. v. A. & W. Ry. Co. 644 (645).

DIFFERENTIALS—Continued.

Of 2 cents in favor of producers whose mills are located east of Mississippi River said to be no longer justifiable. Rates on Lumber from Southern Points, 652 (676).

Rates to north bank Ohio River crossings should not be increased more than is necessary to make such rates 1 cent higher than rates to south bank points. *Id.* (707).

DISCRIMINATION. See also DEVICE; PREFERENCES AND PREJUDICES.

Lack of uniformity in estimated weights results in. New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (37).

That extension of through rates to point prejudiced would enhance losses no justification for discrimination. *Meech & Stoddard v. G. T. Ry. of Can.* 39 (40).

Carrier obliged by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet same conditions at another point entitled to same consideration. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (98).

Higher minimum weights from Grand Rapids than from Fort Dodge is unjust discrimination against Grand Rapids; but it is not shown that Grand Rapids suffers unjust discrimination in Chicago switching district. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (207).

Where allowances prescribed by law for local shipments are paid, lower charges result on local than on export shipments; but mere differences in charges do not establish unjust discrimination. *Shands v. S. A. L. Ry.* 214 (215).

A rate of 11 cents presumably would be discriminatory even for a single carload shipment as compared with lower rate in same locality. Rates on Logs from Stuttgart, Ark. 216 (217).

There should be none between shippers using railroad, private car line, or privately owned refrigerator cars. Rules Governing Transportation of Potatoes, 255 (256).

Practice of receipt and delivery of freight at undefined points on west bank of Mississippi River leads to unjust discrimination. *St. Louis Terminal Case*, 453 (465).

If suspended tariffs were permitted to become effective, inequalities and discriminations would be multiplied. Trap or Ferry Car Service Charges, 516 (548).

DISTANCE.

Proportion of freight to points in back-haul territory should increase as distance from coast terminals increases. Commodity Rates to Pacific Coast Terminals, 13 (17).

Mere difference in distance in favor of Southport Junction is too slight to justify an advantage in rates over New Orleans. New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (38).

Total distances too long to justify difference between rates on ex lake grain to Middletown, Conn., and points preferred. *Meech & Stoddard v. G. T. Ry. of Can.* 39 (40).

To consider each coal-producing point with respect alone to distance would be destructive of all district or group rates. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (100).

Distances via various routes, Deer Park and Spokane, Wash., and other points to Butte, Mont., shown. *Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146 (147).

Carriers have to a considerable extent disregarded distance as a factor in making of California-Arizona sugar rates. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (161, 162).

DISTANCE—Continued.

No coal handled directly through from Linton field to Chicago because distance to Chicago yards is too great to run through with a single train and for other reasons. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (223).

Interior Missouri points to southeastern and Mississippi Valley territories via Memphis compared with combinations via St. Louis. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (346).

Cross-country distance between Union Pacific stations and Burlington stations in Nebraska, shown. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381 (382).

Salt Lake City to Los Angeles is about the same as from Ogden to San Francisco. Rates on Hogs, 627 (628).

New Orleans to Kansas City not the only element to be considered. *Peet Bros. Mfg. Co. v. I. C. R. Co.* 634 (637).

Difference in distance, though shorter for hardwood than yellow pine, not sufficient to warrant making a difference in rates compulsory. Rates on Lumber from Southern Points, 652 (665).

DISTANCE RATES. See **MILEAGE RATES.**

DISTURBANCE OF ADJUSTMENT.

Commission not desirous of disturbing the commercial relation between Salt Lake City and Denver. *Commodity Rates to Pacific Coast Terminals*, 13 (19).

Existing relationship between rates on grain and grain products not disturbed. *Dewey Bros. Co. v. P., C., C. & St. L. Ry. Co.* 135 (139).

Complainants are entitled to relief, and relief should not be denied simply because of carriers' apprehension regarding possible consequences. *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.* 231 (232).

Order dealing with Des Moines rates will require a wholesale readjustment to and from other points in Iowa, and will not be issued at this time. *Des Moines Commodity Rates*, 281 (285).

Commission not warranted in disturbing present plan of grouping Pecos Valley producing points or the relation between other producing points. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (312, 313).

The intrastate rates to St. Louis have disturbed the relation between rates through St. Louis and through Memphis. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (346, 356).

Where it appears that a rate is in harmony with a general adjustment, consideration must be given not only to the accuracy of cost estimates, but to the probable effect of a substantial reduction upon the main body of rates. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (420).

It is a matter of no small importance to the commercial welfare of St. Louis to avoid any radical or unnecessary disturbance of existing conditions. *St. Louis Terminal Case*, 453 (454).

The grain rates to Milwaukee or their relationships to rates to Minneapolis will not be disturbed, the matter in issue having been determined in prior cases. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581 (585).

DIVISIONS. See also **ALLOWANCES; TAP LINES.**

Defendants entitled to greater compensation if there be dissimilarity of circumstances and conditions attending interchange with water line as compared with all-rail. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74).

Accepted by rail carriers on grain and its products to Virginia ports when for export. *Id.* (70).

DIVISIONS—Continued.

Commission can not prescribe divisions of a joint rate until it has been fixed in amount and carriers have failed to agree. *Id.* (72).

Accruing to tunnel company are generally same as its local rates. Rates in Chicago Switching District, 234 (236).

There is no suggestion that the lighterage company receives unduly large divisions. *Id.* (238).

Accorded to small Nevada lines involved appear to be satisfactory to them. Goldfield Cases, 360 (365).

Lines south of Virginia cities do not feel justified in shrinking their revenues when their connections demand more than their local rates as divisions. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (493).

Divisions of joint rates are a matter of bargaining between interested carriers. Second Industrial Railways Case, 596 (604).

Principles followed in settling divisions under second supplemental report in the *Tap Line case* should be considered in fixing divisions with industrial lines. *Id.* (605).

Of joint rates over the through interurban route between Louisville and Indianapolis and points intermediate thereto, established. *Louisville Board of Trade v. I. C. & S. T. Co.* 640.

DOMESTIC RATES. *See* **IMPORT RATES.**

DRAYAGE.

Respondent compelled to pay switching charge or a drayage charge in order to deliver cotton at compress. *Concentration of Cotton at Alexandria, La.* 163 (164).

Trap-car service compared with shipments which are drayed. *Trap or Ferry Car Service Charges*, 516 (524-526).

DUAL SYSTEM OF RATES.

Applies from southeastern territory. Rates on Lumber from Southern Points, 652 (654).

DULUTH & NORTHERN MINNESOTA RAILWAY.

Petition of, that it be released from Commission's order, denied. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500.

EARNINGS. *See also* **AVERAGES.**

Car and car-mile earnings on prepared roofing paper, St. Louis to Oklahoma and other points. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (6).

Baled lint cotton and cottonseed are said to earn more per car than original raw product. *Brantley Co. v. A. C. L. R. R. Co.* 21 (23).

Per car on vegetables, New Orleans to Chicago, ranges from \$80 to \$120. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (35).

Carload earnings on commodities involved exceed carload earnings on citrus fruit moving in opposite direction, including earnings under refrigeration charges imposed. *Westbound Transcontinental Refrigeration Charges*, 140 (142-143).

Earnings per ton-mile and per car earnings. *Transit Rates on Logs and Staves at Alexandria, La.*, 169 (171).

Comparisons of earnings on various commodities not helpful in determining reasonableness of furniture rates to Pacific coast terminals. *Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co.* 262 (265).

Average minimum earnings on trap cars is greatly in excess of \$15 per car. *Trap or Ferry Car Service Charges*, 516 (525).

Per car earnings on imported oils. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (636).

ECONOMIES.

All possible economies are being observed consistent with quality of service demanded and furnished by Tonopah & Goldfield Railroad. Goldfield Cases, 360 (371).

Evidence suggests that southwestern lines involved could better their financial condition without increasing lumber rates. Rates on Lumber from Southern Points, 652 (661).

ELECTRIC LINES.

Divisions prescribed. Louisville Board of Trade *v.* I., C. & S. T. Co. 640.

ELEVATION. See also ALLOWANCES.

Charges absorbed by carriers leading from St. Louis. Merchants Exchange of St. Louis *v.* B. & O. R. R. Co. 341 (351).

Required of carriers by section 1, and for which, if rendered by an elevator operator, they may make an allowance under section 15, is such elevation as is reasonably necessary. Grain Elevation Allowances at Kansas City, 442 (447).

Carriers are not required by the act to furnish elevation for a commercial reason, but may permit stops in transit therefor. *Id.* (447).

Duty of carrier to provide whatever elevation is necessary. *Id.* (447).

ELEVATOR STOPS.

Elevator stops and track stops defined. Grain Elevation Allowances at Kansas City, 442 (443).

ELEVATORS. See also ALLOWANCES.

No discrimination shown in furnishing grain doors as between "line" elevators and farmers' country elevators. Farmers' Cooperative Asso. *v.* C., B. & Q. R. R. Co. 60 (62).

EMBARGOES. See CARS OFF LINE.**EMPTY MOVEMENT.**

Of refrigeration cars on D. & R. G. Montrose & Delta Counties Freight Rate Asso. *v.* D. & R. G. R. R. Co. 400 (408).

On D. & N. M. Ry. is about 99 per cent of loaded movement. Pulp & Paper Mfrs. Traffic Asso. *v.* C., M. & St. P. Ry. Co. 500 (502).

On oil cars not shown to be greater than on coal cars on the Santa Fe. Pacific Creamery Co. *v.* S. P. Co. 586 (590).

EQUALIZING CONDITIONS. See COMMERCIAL AND ECONOMIC CONDITIONS; TRADE CONDITIONS.**EQUALIZING RATES.**

From Mississippi River crossings to Iowa destinations. Proportional Class Rates to Iowa Points, 278 (279).

No reason shown why equalization of Rio Grande crossings should afford a valid basis for fourth section relief in connection with the El Paso local rates. Corp. Comm. of New Mexico *v.* A., T. & S. F. Ry. Co. 292 (297, 301).

EQUATED MILEAGE.

Rates divided between Salt Lake line and lines east of Las Vegas, Nevada, upon an equated mileage basis, allowing each mile of lines west of Las Vegas to count for 2 miles on the Salt Lake line. Goldfield cases, 360 (364).

EQUIPMENT. See also TANK CARS.

Inspection and repairing of grain-car equipment. Farmers' Cooperative Asso. *v.* C., B. & Q. R. R. Co. 60 (62).

Of complainant navigation company. Kansas City Missouri River Nav. Co. *v.* C. & O. Ry. Co. 67 (68).

It may be assumed that carriers will provide whatever may be necessary for such transportation services as requirements of their traffic make necessary. Grain Elevation Allowances at Kansas City, 442 (446, 447).

ESTIMATED WEIGHT.

Defendants' published estimated weights are neither related to the actual weights of the commodities, nor uniform, and must be revised. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (36, 37).

Elimination of rules governing, on molasses in wood or in tank cars and on mineral water in tank cars, authorized. *Western Trunk Line Rules*, 554 (572).

ESTOPPEL. *See DAMAGES.*

EUROPE. *See WAR IN EUROPE.*

EX LAKE GRAIN.

Middletown, Conn., discriminated against. *Meech & Stoddard v. G. T. Ry. Co. of Can.* 39 (40).

EXPEDITED SERVICE.

Vegetables require, and are refused rates made on basis of water competition. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (34).

Boats perform a dependable service for farmers and growers. *S. P. Co. Steamboats on Sacramento River*, 174 (176); *S. P. Co. Ownership of Stock in Transp. Co.* 648.

EXPENSE BILLS.

Limitation of 12 months upon expense bills to be used with respect to lumber handled in transit at Newport, Tenn., not found unreasonable. *Spiegle & Co. v. S. Ry. Co.* 448 (450).

EXPORT.

Through routes and joint rates established between rail and water line on grain products to Virginia ports for export. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74).

State statute providing allowances for staking cars not applicable to export traffic. *Shands v. S. A. L. Ry.* 214.

A considerable portion of cotton moves to Galveston for export. *Eastbound Transcontinental Cotton Rates*, 248 (251).

FACILITIES. *See also TERMINAL FACILITIES.*

Whatever transportation service or facility the law requires the carrier to supply they have the right to furnish, 232 U. S., 199. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (190); *Car Spotting Charges*, 609 (617).

FACTOR.

The Shreveport factor under present rate adjustment has a larger portion of his capital tied up in paid expense bills than have his eastern Texas competitors. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (480).

FACTOR OF THROUGH RATES.

In considering applications for relief from fourth section Commission deals with through rates from origin to destination, and not with factors thereof. *R. R. Comrs. of Iowa v. A., T. & S. F. Ry. Co.* 111 (113).

FEEDING AND WATERING.

Reasonableness of charge for feeding, watering, and resting horses, not within Commission's jurisdiction. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

FERRIES. *See also CAR FERRY; TERMINAL RAILROAD ASSOCIATION.*

Wiggins ferry and the Interstate car transfer between St. Louis and East St. Louis. *St. Louis Terminal Case*, 453 (456).

FERRY CAR. *See TRAP-CAR SERVICE.***"FILL."**

When live stock have been taken off the cars they are fed and watered, which is termed "fill." *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423 (425).

FILL ALLOWANCES. *See* ALLOWANCES.

FINANCIAL CONDITION. *See also* WEAK LINES.

Statement of total revenue, expenses and taxes, and railway operating income or loss of Nevada railroads serving Goldfield and Tonopah for 1910 and 1914, inclusive. *Goldfield Cases*, 360 (371).

Financial results of the D. & N. M. Ry., shown for the year ending June 30, 1914, can not be considered conclusive. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (506).

Southwestern lines, taken collectively, are not prosperous. Rates on Lumber from Southern Points, 652 (657).

That respondents are not in good financial condition can not be held to justify proposed rates. *Id.* (681).

Of Mississippi Valley lines shown. *Id.* (684).

Southern Railway in Mississippi not prosperous. *Id.* (687).

FINANCIAL RESPONSIBILITY.

Implied doubt as to, does not of itself justify a refusal to establish through routes and joint rates. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (73).

Financial ability of any carrier would be a matter for consideration in judging of the reasonableness of request for special or additional equipment. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (192).

FLAT RATES.

Commission's attitude on question of transit provisions, especially with reference to flat rates, discussed. *Transit Rates on Logs and Staves at Alexandria, La.*, 169 (171).

FOLLOW LOT.

Revised follow-lot rule should conform to the western classification rule. *Western Trunk Line Rules*, 554 (577).

FOOTAGE AND WEIGHT RULE. *See* TRANSIT RULES.

"FREE SERVICES." *See also* ADDITIONAL CHARGES.

If a service offered and for a long time performed in consideration of a rate includes taking property from a given point and delivering at a given point, the delivery at that point is in no sense a "free service." Rates in Chicago Switching District, 234 (242).

FREE TRANSPORTATION.

Agreement providing for free transportation for workmen, materials, and supplies required by complainant for performance of a construction contract can only be enforced by the courts. *McArthur Bros. Co. v. E. P. & S. W. Co.* 30 (31).

No action necessary regarding rules governing free return transportation of attendants, and rules relating to free return of linings, etc., when protective service is furnished by shipper, held not unreasonable. *Miller & Co. v. N. P. Ry. Co.* 154 (155, 156).

Rule providing for, of tarpaulins used for protection of ice may be canceled. *Western Trunk Line Rules*, 554 (562).

Rule providing for, of fish cars, cans, crates, etc., should be continued. *Id.* (562).

FREIGHT CHARGES.

The Coast Line contracted to carry lumber to Portsmouth, Va., and may not at will say "we must be paid before we will surrender to the Seaboard." *Este Co. v. A. C. L. R. R. Co.* 469 (471).

FREIGHT STATIONS.

"Universal" and "commercial" stations described. Rates in Chicago Switching District, 234 (235-236).

GATEWAYS.

Rate on shingles to St. Louis maintained to keep that point on a parity with Chicago as a gateway to c. f. a. territory. *R. R. Comra. of Iowa v. A., T. & S. F. Ry. Co.* 111 (115).

GEOGRAPHICAL LOCATION. *See* LOCATION.**GOLD MINES.**

Migration of men and money into Nevada for development of mines said to be without parallel in history of the West since discovery of gold in California. *Goldfield Cases*, 360 (365).

GOVERNMENT FREIGHT.

Permission from Government required before steamboat can be assigned to any service other than carriage of. *S. P. Co. Steamboats on Sacramento River*, 174 (176).

GOVERNMENT RATES.

Rule providing that Government shipments will take commercial rates, subject to land-grant deductions, may be canceled. *Western Trunk Line Rules*, 554 (568).

GRADED RATES.

Rates should be fairly graded from ports to the interior. *Commodity Rates to Pacific Coast Terminals*, 13 (17).

Rates on sea-island cotton are graded on a mileage basis. *Brantley Co. v. A. C. L. R. R. Co.* 21 (24).

California-Arizona sugar and sirup rates formerly graded to main-line points are now largely blanketed. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (161).

Spread between rates to the rivers is perhaps too great to permit of a satisfactory grading back across State of Iowa. *Des Moines Commodity Rates*, 281 (284).

North of Arkansas River rates are graded in small groups as distance from gateways increases, until graded rates reach the yellow-pine blanket rate, observed thereafter as maximum. *Rates on Lumber from Southern Points*, 652 (667).

GRADES.

Because of grades an engine that can handle 2,200 net tons north of West Clinton can handle only 1,800 net tons between the Linton field and West Clinton. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (222).

Nevada lines serving Tonopah and Goldfield operate over a mountainous and barren country with severe grades and difficult operating conditions. *Goldfield Cases*, 360 (373).

Transportation difficulties encountered on haul from the west. *Pacific Creamery Co. v. S. P. Co.* 586 (593).

GRAIN DOORS. *See also* CAR FITTING.

"Grain doors" described. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (61).

Requiring shipper to place grain doors not unreasonable. *Id.* (65).

"The grain door bureau" maintained at terminal points. *Id.* (66).

GROUP RATES. *See also* BLANKET RATES; ZONE RATES.

For prepared roofing paper and building paper from St. Louis to Oklahoma points there are two groups. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (4).

To consider each coal-producing point with respect alone to distance would be destructive of all district or group rates. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (100).

Certain Washington and Idaho points grouped for rate-making purposes. *Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146 (148).

Texas common points are divided into north and south groups for making rates on potatoes, onions, etc., from Colorado, Utah, and Idaho. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 400 (405).

HEATER SERVICE.

Where heater service is performed by shipper and loss or damage results from frost or overheating, not the direct result of negligence of carrier, such loss or damage is not caused by carrier. *Miller & Co. v. N. P. Ry. Co.* 154 (157).

HEPBURN ACT.

Trap-car service rendered for many years previous to passage of. *Trap or Ferry Car Service Charges*, 516 (521).

HOOF SELLING WEIGHTS.

Assessment of freight charges upon, less fill allowances, not found unlawful. *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423.

ICING. See REFRIGERATION.**ILLINOIS CLASSIFICATION.**

Certain rules not operative in territory subject to. *Western Trunk Line Rules*, 554 (562, 563, 572).

IMPORT AND DOMESTIC.

Identity of imported shipment must be preserved in order that rates lower than domestic rates may be applied. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253 (254).

Relationship of rates from port to inland destinations on domestic and import shipments of fuel oil not involved. *Magnolia Petroleum Co. v. Channel & Dock Co.* 330 (332).

IMPORT RATES.

Original report and order with respect to rates on blackstrap molasses from ports, adhered to. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253.

Rates on imported wood pulp from Boston to various New England points not found unreasonable. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323.

Difference in rates applied to imported and domestic pulp not unjustly discriminatory. *Id.* 323.

Import rate on coconut, copra, palm and palm-kernel oils from New Orleans to Kansas City, not found unreasonable, as compared with lower rates to Chicago, Cincinnati, and St. Louis. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634.

IMPORTS.

Coke transported to Pacific coast from Europe. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10 (12).

Fuel oil from Mexico. *Magnolia Petroleum Co. v. Channel & Dock Co.* 330 (332).

IN-AND-OUT RATES. See also LOCAL RATES.

Muskogee is at a disadvantage in the total in-and-out rate on roofing paper in most cases. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (7).

So long as there are flat rates published out of St. Louis shippers must be permitted to ship outbound under these rates irrespective of rates paid inbound. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (351).

St. Louis has a right to reasonable outbound rates on all commodities to which reshipping rates do not apply. *Id.* (351).

It might be that competition has influenced the establishment of an adjustment on one commodity moving outbound which it would not be just to carriers to require on another moving inbound. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (421).

INCOME. See also FINANCIAL CONDITION.

Average operating income of lines serving Goldfield and Tonopah is \$284,641.18. *Goldfield Cases*, 360 (372).

INDEPENDENT BOAT LINES.

The uncontradicted testimony is that the service of the steamship company is more satisfactory than that of. *O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co.* 165 (167).

INDUSTRIAL RAILWAYS.

In approaching the question whether common carrier status is bona fide it must be borne in mind that there are interests of the industry beyond the mere question of rates in maintaining such status. *Second Industrial Railways Case*, 596 (600).

Of 742 industries in official classification territory which performed their own switching, 594 received no compensation therefor, while only 148 were paid allowances or divisions. *Id.* (603).

The trunk lines in attempting to apply the principles laid down in the *Industrial Railways case*, 29 I. C. C., 212, have not done so accurately nor consistently, as indicated by tariffs here involved. *Id.* (603).

It may well be that there should be a charge in addition to the line-haul rate for service upon tracks of some lines involved. *Id.* (605).

Should not receive from the more distant trunk line connection any compensation as division or allowance which exceeds the amount added to the junction-point rate. *Id.* (606).

A certain industrial line had an ephemeral existence, submitting itself to and withdrawing from Commission's jurisdiction at will. *Id.* (607).

Trunk lines expected to reform tariffs and file whatever arrangements they may make with industrial lines. *Id.* (608).

Certain industrial lines are not common carriers and fall within principles laid down in the *General Electric case*, 14 I. C. C., 237. *Id.* (607, 608).

INDUSTRIES. See also SPOTTING CARS.

The mere fact that individual plants are operated together as a single industry does not deprive the industry of the right to such a service in receipt and delivery of freight at each of the several plants as that plant would be entitled to have if operated separately. *Car Spotting Charges*, 609 (618).

INJUNCTION.

Was granted against enforcement of Commission's order in the *Metropolis case*, 30 I. C. C., 40. *Rates on Lumber from Southern Points*, 652 (671).

INSULATED CARS.

Change in wording of rule with respect to charges for rental of, found justified. *Rules Governing Transportation of Potatoes*, 255.

INSURANCE.

Not proper to use insured rates as a comparison in support of one contention and not in another. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484, (490).

INTERCHANGE OF TRAFFIC. See TARIFFS.**INTERMEDIATE RATES.**

The same method of constructing rates to intermediate points should be followed by all lines. *Commodity Rates to Pacific Coast Terminals*, 13 (17).

Not entitled to same rates as apply from and to river. *Proportional Class Rates to Iowa Points*, 278 (280).

Where relief is denied under fourth section, carriers may correct undue discrimination by increasing the rate to the more distant point, decreasing rates to intermediate points, or by simultaneous increases and reductions. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (303).

Leadville and Aspen, Colo., are not intermediate to Colorado common points within the meaning of the act. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409 (410).

A rate made in meeting competition at a point becomes the lawful factor in making up aggregate of intermediate rates. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (494).

INTERSTATE COMMERCE.

Transportation of property from or via East St. Louis to Kansas City, Mo.-Kans., is interstate. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (69). Commission has constantly insisted upon exaction of lawfully published interstate rates upon all traffic really moving as. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.* 271 (273).

Pulp-wood shipments, though billed only to Knife River, are interstate and subject to interstate rates. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (510).

INTERSTATE RATES. *See STATE AND INTERSTATE.*

INTERVENERS. *See also ISSUES.*

In cases before Commission. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93; *East-bound Transcontinental Cotton Rates*, 248 (249); *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253; *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.* 271; *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292; *Moore & Thompson Paper Co. v. B. & M. R. R. Co.* 323; *Western Newspaper Union v. A. & R. R. R. Co.* 326; *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381; *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393; *Same v. Same*, 400; *Same v. Same*, 409; *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423; *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581; *Coal Rates from Illinois Mines to Omaha*, 623.

INVESTMENT.

Magnitude of investment and reliance on former rates in making it, concluded by *So. Pac. Co. v. I. C. C.*, 219 U. S., 433. *Brantley Co. v. A. C. L. R. R. Co.* 21 (24).

Rich ore veins, prospective tonnage, rush of goldseekers, extraordinary building activity in mining camps, and other conditions which induced building of certain Nevada lines, discussed. *Goldfield Cases*, 260 (265, 266).

Immediate rewards from investments in railways serving a territory of character in which Tonopah and Goldfield is situated may reasonably be higher than those resulting from construction of railways in more stable communities. *Id.* (373).

Question of amortization might properly be taken into consideration in originally prescribing rates for future, but such a plan can not be applied to pulp wood alone. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (510).

ISSUES.

To extent petition of intervention goes beyond issues raised by original complaint it can not be considered. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323.

JOINT AGENCY. *See also Southwestern Tariff Committee.*

The Cupples station is considered as a freight station of all carriers reaching either St. Louis or East St. Louis, and an agent employed by them signs bills of lading for each. *Trap or Ferry Car Service Charges*, 516 (540).

"JOINT LINE."

Means two or more lines of railroad not under same management or control. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (478).

JOINT OWNERSHIP.

Petitioners granted authority to continue. *Joint Ownership and Operation of Mackinac Transp. Co.* 229.

JOINT RATES.

Joint rates with water line should not be greater than all-rail rates. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74).

JOINT RATES—Continued.

Commission has uniformly held that a carrier may unjustly discriminate against a point by participation in joint rates thereto or therefrom, although its line does not reach that point. *S. P. Co. Ownership of Oil Steamers*, 77 (80).

Joint rates on hardwood lumber from mills on L. & P. B. Ry. at Huttig, Ark., held discriminatory. *The Tap Line Case*, 116.

By participation in joint rates petitioner serves San Francisco and San Pedro and competes for traffic with its steamers operating to those points. *O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co.* 165 (166).

On hay via Pecos, Tex., not warranted. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (312).

Joint rate shall not exceed the sum of rates prescribed for single line application. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (478).

Principles laid down in *Tap Line Cases* should be fully considered by trunk lines when reestablishing joint rates with industrial lines. *Second Industrial Railways Case*, 596 (605).

The Texas & Pacific joins with the Illinois Central in through rates to Cairo and must be held responsible for any discrimination against Paducah. Rates on Lumber from Southern Points, 652 (671).

JUDICIAL NOTICE.

Commission may take judicial notice of the fact that applications for relief from the fourth section have been filed. *Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.* 208 (209).

JUNCTION POINT RATES.

Rates maintained by New Haven road to New York from junction points with B. & M. and B. & A. railroads, discussed. Rates on Cotton Piece Goods, 41 (44).

Through charges on products of mill should not have exceeded the junction point rate on hardwood. *The Tap Line Case*, 116 (118).

Phoenix and Prescott, Ariz., to take rates on sugar not more than 5 cents over junction point rates. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (162).

In some cases extending back to points on industrially owned line. *Second Industrial Railways Case*, 596 (604).

There can be no justification for giving a division out of the junction point rate on traffic of the controlling industry while making rates to independent shippers on basis of the combination of local rates over the junction. *Id.* (607).

JURISDICTION.

The 28-hour law does not vest in this Commission authority to enforce its provisions. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

An action for damages for breach of contract is beyond jurisdiction of Commission. *McArthur Bros. Co. v. E. P. & S. W. Co.* 30.

The power to require proper and adequate cars for transportation of passengers is not analogous to the power to require that such cars be of peculiar or especial design, pattern, or material. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (188).

As to certain lines there is no question involved which is within the purview of Commission's jurisdiction. *Second Industrial Railways Case*, 596 (604).

"LAID-DOWN COST."

Prepared roofing paper at Oklahoma points. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (7).

LEAKAGE.

It is not unreasonable to expect shipper to make minor and inexpensive repairs to prepare car for loading and prevent leakage. *Farmers' Cooperative Asso. v. O., B. & Q. R. R. Co.* 60 (64).

LEASE.

Unlawful for trunk line to offer facilities by lease of trackage rights to a single shipper. *Second Industrial Railways Case*, 596 (607).

LEASED CARS.

Carriers should lease cars only upon such terms as permit them to furnish cars without discrimination. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (194).

LIABILITY OF CARRIER. *See* LIMITATION OF LIABILITY.

LIGHTERAGE COMPANY.

Facilities and equipment of. Rates in Chicago Switching District, 234 (237).

LIMITATION OF LIABILITY.

Common-law liability of carrier for value of property at place of destination and for actual damages, may be modified through any fair, reasonable, and just agreement with shipper. *Larkin Co. v. E. & W. Transp. Co.* 106 (109).

Carmack amendment operated to render void to extent stated any attempted limitation of initial carrier's liability. *Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co.* 511 (512).

LINE HAUL CARRIERS.

No substantial difference between services performed by tunnel and lighterage companies and those performed by line-haul carriers for each other or those performed by belt-line or industrial roads. Rates in Chicago Switching District, 234 (239).

LINE-HAUL RATES. *See also* INDUSTRIAL RAILWAYS; SINGLE-LINE; SPOTTING CARS.

The line-haul rate covers only one placement of the car for loading and unloading, and an additional charge should be made for each additional placement of the car for that purpose. *Car Spotting Charges*, 609 (618).

LINING CARS. *See* CAR FITTING; FREE TRANSPORTATION.

LOADING.

Both baled lint cotton and cotton seed are said to load heavier than original raw product. *Brantley Co. v. A. C. L. R. R. Co.* 21 (23).

Heaviest loading of lettuce, etc., is about 17,000 pounds. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (36).

Agricultural implements do not load much in excess of 20,000 pounds. *Parlin & Orendorff v. I. C. R. R. Co.* 90 (92).

Feed and litter carriers may be loaded to the minimum. *Louden Machinery Co. v. A., T. & S. F. Ry. Co.* 383 (385).

Of slack is substantially lighter than that of other varieties of bituminous coal. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (422).

Gum lumber does not load as heavily as other hardwoods. Rates on Lumber from Southern Points, 652 (692).

LOADING AND UNLOADING.

Manner of handling grapes in baskets interferes with economical loading and unloading of cars. *Blackburn-Warden Co. v. I. C. R. R. Co.* 58 (59).

Tank cars may be rapidly loaded, and jobbers and dealers have facilities for unloading by gravity. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (180).

Shipper who loads and unloads his less-than-carload shipments and furnishes a terminal to carrier, considered. *Trap or Ferry Car Service Charges*, 516 (547).

Cancellation of rule relating to, of freight taking carload rates, approved. *Western Trunk Line Rules*, 554 (579).

Line-haul rate covers only one placement of car for. *Car Spotting Charges*, 609 (618).

LOCAL RATES. See also PROPORTIONAL RATES.

Eastern lines receive their local rates up to Chicago or Mississippi River.

Indianapolis Chamber of Commerce v. O., C., C. & St. L. Ry. Co. 267 (268).

Local rates can not be limited according to point of origin of shipment or rates which were paid inbound. Merchants Exchange of St. Louis v. B. & O. R. R. Co. 341 (351, 359).

Out of St. Louis can not be limited according to point of origin of shipment or rates paid outbound, and it would be unlawful to require cancellation of inbound billing on shipments made outbound under local rates. *Id.* (351, 359).

Danville's rates are made by use of, from Lynchburg. City of Danville, Va., v. S. Ry. Co. 430 (439).

LOCATION.

Relation in which by geographical location and commercial conditions Sioux City is naturally placed, not disturbed. Lumber Rates from Points in Arkansas, 102 (105).

Fruit and vegetable belt, owing to topographical conditions, is, except to a very limited extent, inaccessible to any railroad and is dependent upon river service. S. P. Co. Steamboats on Sacramento River, 174 (176).

Places protestants at some natural disadvantage. Eastbound Transcontinental Cotton Rates, 248 (252).

Geographical position of intermediate points does not entitle them to same rates as apply to and from river. Proportional Class Rates to Iowa Points, 278 (280).

El Paso, Tex., Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (296).

Tonopah and Goldfield are mining camps about 30 miles apart, located in the western part of Nevada in midst of a wide region practically devoid of agricultural possibilities. Goldfield Cases, 360 (363).

From the east Lynchburg has benefit of location over Danville. City of Danville, Va., v. S. Ry. Co. 430 (440).

Spartanburg is entitled to the advantage of its location on short lines from Cincinnati. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (498).

LONG AND SHORT HAUL.

A certain degree of relief should be authorized to enable carriers to more effectively compete with water lines, but not such as will secure to rail lines the same percentage of traffic enjoyed prior to opening of the canal. Commodity Rates to Pacific Coast Terminals, 13 (17).

Violations of fourth section in rates on vegetables have been remedied. New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (37).

Authority to charge lower rates on cedar shingles from Oregon, Washington, Idaho, and Montana to Chicago, Ill., and to St. Louis, Mo., than to intermediate points, denied. R. R. Comrs. of Iowa v. A., T. & S. F. Ry. Co. 111.

Higher rates from Lynchburg to Charlotte, etc., than to Atlanta, and from Anniston, Ala., to Charlotte, etc., than to Virginia cities, not justified. City of Charlotte, N. C., v. S. Ry. Co. 128 (133).

— Because of circuitous route the maintenance of lower rates to Virginia cities than to Rock Hill, S. C., and points on Southern Ry. north of Augusta, Ga., will be permitted; but such rates shall not be higher than rates to Rock Hill. *Id.* (134).

Maintenance of lower rates on grain and grain products from Trebein and Leesburg, Ohio, to Norfolk, Va., than to intermediate points, not justified. Dewey Bros. Co. v. P., O., C. & St. L. Ry. Co. 135 (138).

Rates on grain products from Trebein and Leesburg to main-line points on the N. & W. Ry. west of and including Bluefield found unreasonable and rates prescribed; but rates to branch-line stations both east and west of Bluefield are not unreasonable. *Id.* (138, 139).

LONG AND SHORT HAUL—Continued.

Lower joint rates from Hutchinson and McPherson than rates from Inman, Kans., were withdrawn, thus removing the fourth section violation, and application for relief denied. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (198).

The Rock Island is permitted to meet competition of the more direct route to Burlington, while maintaining higher intermediate rates. *Proportional Class Rates to Iowa Points*, 278 (280).

Readjustment of all rates between Peoria and Des Moines and Springfield and Des Moines which involve fourth section violations, required. *Des Moines Commodity Rates*, 281 (286).

Carriers denied permission to maintain lower rates from Kansas City, St. Louis, and Chicago to El Paso, Tex., than to intermediate New Mexico points, except in certain instances. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292.

LOSS AND DAMAGE. See also HEATER SERVICE.

Basket tops become warped and expose grapes to waste and damage. *Blackburn-Warden Co. v. I. C. R. R. Co.* 58 (59).

Agricultural implements subject to damage in transit. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (92).

It is desirable that carriers should keep transportation charges and claims for loss and damage in transit entirely separate. *Larkin Co. v. E. & W. Transp. Co.* 106 (108).

LOST SHIPMENTS.

Carriers using bill of lading involved should publish tariffs providing for free movement of shipment weighing 100 pounds or less when made to replace a part of shipment which has been lost and upon which, as a part of a shipment, charges would be less than if shipped alone. *Larkin Co. v. E. & W. Transp. Co.* 106 (111).

LOST TICKET.

Mileage book cover lost, and presentation was made more than 18 months after book was issued; refusal to make refund of \$5 not found unreasonable. *Jaeger v. A. A. R. R. Co.* 28.

LOW-GRADE COMMODITY.

Fertilizer is a low-grade commodity of low value. *Brantley Co. v. A. C. L. R. R. Co.* 21 (23).

Commission is not prepared to require rates on low-grade apples in bulk from Montrose and Delta counties in Colorado to the east lower than rates on apples in packages. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 400.

Distillate is a low-grade volatile oil. *Pacific Creamery Co. v. S. P. Co.* 586 (595).

LOW RATES.

Evidence must be clear that lower rate required to more distant point is actually subnormal. *R. R. Comrs. of Iowa v. A., T. & S. F. Ry. Co.* 111 (113).

Rates on cast-iron pipe from Virginia cities and Anniston, Ala., to more distant points involved are lower than they might reasonably be but for competitive conditions. *City of Charlotte, N. C., v. S. Ry. Co.* 120 (133).

Texas common-point rates said to be unduly low. *Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co.* 292 (297).

Ton-mile earnings not conclusive in determining whether or not rates are low where density of traffic is larger on one road than on another. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (507).

Commission can not say that in the past petitioner's rates have been too low and thus attempt to legalize charges that have been found unlawful. *Id.* (510).

LOW RATES—Continued.

Low rate on slack coal said to have been made so that coal would move into Hayden, Ariz., in competition with oil. *Pacific Creamery Co. v. S. P. Co.* 586 (590).

That maintenance of the \$2.05 rate will disrupt and depress rates from other fields appears to be satisfactorily established. *Coal Rates from Illinois Mines to Omaha*, 623 (626).

LOWREY TARIFF.

Arose as a voluntary agreement between carriers. Rates on Hay to Chicago, 150 (152).

Joint tariff applicable in Chicago switching district. Rates in Chicago Switching District, 234.

MAILED NOTICE.

Carrier's duty performed when notice was placed in mail. *Ohio Iron & Metal Co. v. E., J. & E. Ry. Co.* 75.

MAIN-LINE AND BRANCH-LINE POINTS.

Maximum rates fixed. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (309).

MAP.

Routes to and through New Mexico and location of points of destination. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (295).

Showing lines of the D. & R. G. in Colorado. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393 (395).

Illustrating location of Charlotte and Spartanburg, short-line distances from ports, water mileage, and rates. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (487).

Showing principal routes from Cincinnati to Charlotte and Spartanburg. *Id.* (497).

Showing Arizona points to which reasonable rates on fuel oil, refined oils, and engine distillate are prescribed. *Pacific Creamery Co. v. S. P. Co.* 586 (587).

MARKED CAPACITY.

Tariffs should provide that when cars are incapable of being loaded to minimum applicable, the marked capacity will govern. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10.

Rule governing cars loaded in excess of 10 per cent above may be canceled. *Western Trunk Line Rules*, 554 (579).

MARKET COMPETITION. See COMPETITION.**MARKETS.**

Relationship between rates from Ohio districts and those from other districts, the coal from which seeks competitive markets under like conditions, can not be disregarded. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (100).

Chicago is the most important market for Indiana groups involved. The gas belt of Indiana is also important. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (227).

European situation is said to have curtailed market for mine products. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (261).

Under normal market conditions little wheat from Nebraska territory involved moves to Kansas City. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381 (382).

The Commission will not condemn lightly a system which gives satisfaction at many important markets. *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423 (427).

Milwaukee is a primary market for handling of grain. *Chamber of Commerce of Milwaukee v. O., M. & St. P. Ry. Co.* 581 (583).

MEASURE OF RATES.

From the fact that the average distance from one district is substantially the same as from another it does not necessarily follow that higher rates from the former are unreasonable. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (96).

If cost of mining coal is considered in fixing rates from one district, the same consideration can not be lawfully denied by same carriers serving another in which there are mines operating under same conditions. *Id.* (98).

The investment being of a temporary character, the rates over lines serving Tropic and Goldfield are not necessarily unreasonable, although higher than rates for like distances in other parts of country. *Goldfield Cases*, 360 (373).

Average system earnings are said not to afford a proper measure of earnings on a particular commodity between specific points. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323 (325).

The fact that a rate is difficult to compute can have no weight in determining whether or not it is reasonable in amount. *Montrose & Delta Counties Freight Rate Assn. v. D. & R. G. R. R. Co.* 393 (399).

Cost of service a factor to be considered. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (420).

Not shown to be proper to measure the rate to Spartanburg via Norfolk rather than via Charleston. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (490).

Rates for transportation of freight may not be predicated upon character of vehicle from which commodities are delivered on freight platforms or in cars, so long as no additional cost or burden is put upon the carriers. *Trap or Ferry Car Service Charges*, 516 (542).

The reasonableness of a rate may be judged in part from a comparison with revenue derived by carriers involved from transportation of other commodities under similar circumstances and conditions. *Pacific Creamery Co. v. S. P. Co.* 586 (591).

MILEAGE BOOK.

Refusal to refund \$5 for mileage book cover because presentation was made more than 18 months after book was issued not found unreasonable. *Jaeger v. A. A. R. R. Co.* 28.

MILEAGE RATES.

Rate on sea-island cotton for 210 miles and over 200 miles is 26 cents; held reasonable. *Brantley Co. v. A. C. L. R. R. Co.* 21 (24).

Kansas-Missouri mileage scale seldom becomes operative over distances more than 200 miles, and does not affect the issues in this case. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (199).

Former order prescribing mileage scale of rates from points in Iowa to certain destinations in Kansas modified. *Iowa Board of R. R. Comrs. v. A. E. R. R. Co.* 379.

Distance scale of class rates, as maxima, prescribed between Shreveport and eastern Texas points. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (476).

MILLING IN TRANSIT. See TRANSIT PRIVILEGES.**MINIMUM CHARGES.**

Where charges on lost article as a part of shipment are less than minimum charge on article if shipped alone, carriers should collect charges on full shipment and should transport a like article free of charge. *Larkin Co. v. E. & W. Transp. Co.* 106 (108).

Commission has no power to prescribe a minimum charge for any service or the maximum service for any charge. *Rates in Chicago Switching District*, 234 (241).

Of \$6 per car on lumber handled in transit at Newport, Tenn., not found unreasonable. *Spiegle & Co. v. S. Ry. Co.* 448 (452).

MINIMUM WEIGHT.

Minimum weight not to exceed 40,000 pounds prescribed on roofing and building paper to Oklahoma points. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3(8).

Tariffs should provide that minimum will not apply when cars of less capacity are furnished, and that in such case marked capacity of car used will govern. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10 (12).

The 20,000-pound minimum on lettuce, New Orleans to Chicago, not found unreasonable. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (36).

Rates and minimum weights prescribed. *Mixed Carloads of Lime, Cement, and Plaster*, 124.

Rates on sirup have not been established for minimum of 60,000 pounds, as in the case of sugar. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (161).

Maintenance of higher minimum carload weights from Grand Rapids, Mich., than from Fort Dodge, Iowa, to northern Illinois and southern Wisconsin unjustly discriminates against Grand Rapids. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (207).

On furniture in cars of any size to California terminals is 12,000 pounds, and to north Pacific coast terminals is subject to rule 6-B of western classification. *Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co.* 262 (263, 266).

Reduction in, on hay from Pecos Valley not justified. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (312).

On feed or litter carriers in straight or mixed carloads not found unreasonable. *Louden Machinery Co. v. A., T. & S. F. Ry. Co.* 383.

Provided in Texas classification lower than in western. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (478).

Prevailing in trunk line territory for trap cars is 5,000 pounds; central freight association, 8,000 to 10,000 pounds; territory west of Mississippi River, 6,000 pounds. *Trap or Ferry Car Service Charges*, 516 (525).

Minima upon which charges are assessed at Chicago are 10,000 pounds by eastern carriers and 6,000 pounds by western carriers. *Id.* (541).

Consolidation of rules prescribing varying minima on shipments loaded in new or rebuilt equipment, authorized. *Western Trunk Lines Rules*, 554 (571).

Rule providing for minimum of 10,000 pounds, on bananas, l. c. l., and revision of rule governing minimum on automobiles in cars of certain dimensions, may be eliminated. *Id.* (572).

Increase to 50,000 pounds on scrap iron into concentrating points, approved. *Id.* (573).

Rules providing for carload minimum of 20,000 pounds on lettuce and 30,000 pounds on tile roofing, may be canceled. *Id.* (573).

Of 24,000 pounds on sash, doors, and blinds, on all cars, authorized. *Id.* (573).

MISBILLING. See **BILLING.**

MISQUOTATION OF RATES.

Carrier's agent erroneously advised shipper that reconsignment could be effected at the lowest rate between origin and final destination. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 122 (123).

MISROUTING.

Carrier misrouted wheat from Perrysville, Ohio, to Johnson City, Tenn., but lack of evidence as to final destination precludes a finding as to amount of damage sustained from loss of transit service. *Gray & Smith v. P. Co.* 25 (27).

Sugar, Crockett, Cal., to Goldfield, Nev., was erroneously billed via route taking higher rate, and circumstances do not constitute a case of misrouting under rule 286, paragraph (f) of bulletin 6. *Goldfield Cases*, 360 (378).

"MISSIONARY" RATES.

It is urged that rates originally established were made to enable a struggling industry to establish itself. Rates on Lumber from Southern Points, 652 (659).

MIXED CARLOADS.

Rates and minimum weights not higher than the highest commodity rate and minimum weight applicable to straight carloads of any of the commodities in the mixed car, prescribed. Mixed Carloads of Lime, Cement, and Plaster, 124 (127).

No finding made as to sugar and sirup in mixed carloads. Arizona Corp. Comm. v. A., T. & S. F. Ry. Co. 158 (162).

Rates on furniture in mixed carloads, Grand Rapids, Mich., and Rockford, Ill., to Pacific coast terminals, not unreasonable. Furniture Mfra. Assn. of Grand Rapids v. A. A. R. R. Co. 262.

Practice of shipping mixed cars is of value to both carrier and shipper. Id. (265).

Refusal of defendants to permit mixture of feed or litter carriers with agricultural implements not unreasonable. Loudon Machinery Co. v. A., T. & S. F. Ry. Co. 383.

Elimination of rules for mixtures of salt and of pitch and tar with cement, lime, stucco, and plaster, approved. Western Trunk Line Rules, 554 (561).

Cancellation of rules relating to mixtures of plastering hair and fiber with lime or plaster, mixed carloads of wooden pumps and tubing, and wooden pumps, carloads, approved. Id. (567).

Elimination of provision for fifth-class rating on straight or mixed carloads of stovepipe, stovepipe iron, elbows, and coal hods, or same mixed with sheet-iron dripping pans and stove elbows, authorized. Id. (569-570).

Cancellation of rule governing straight or mixed carloads of grain or grain and seed at close of shipping season, approved. Id. (578-579).

MUNCIE & WESTERN RAILROAD.

It is unnecessary to determine whether common carrier or plant facility as in either case proposed spotting charge is not justified. Car Spotting Charges, 609 (620).

NAVIGABILITY.

Improvement of Missouri River by Government. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co. 67 (70).

NAVIGATION.

On upper Sacramento River it is necessary to navigate in busy season in less than 30 inches of water. S. P. Co. Ownership of Stock in Transportation Co. 648 (650).

NOTICE OF ARRIVAL.

Carrier's duty performed when notice was placed in mail, and demurrage accruing on scrap iron due to failure of consignee to receive notice was properly assessed. Ohio Iron & Metal Co. v. E., J. & E. Ry. Co. 75.

OCEAN-AND-RAIL RATES.

Rates from eastern seaboard territory, etc., to Spartanburg, via Charleston, higher than to Charlotte, will be unjustly discriminatory. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (490).

"OFF-TRACK" FREIGHT STATIONS.

Defined. Are intended for use of general shipping public without restriction. St. Louis Terminal Case, 453 (457).

Operation of, by certain transfer companies in St. Louis as public freight stations of carriers not found unlawful. Id. (460).

OFFICIAL CLASSIFICATION COMMITTEE.

Refused to provide a carload rating on parcel-post matter. *Western Trunk Line Rules*, 554 (558).

"ONE LOADING POINT."

Bill of lading must be issued from one loading point only. *Western Trunk Line Rules*, 554 (577).

OPERATING CONDITIONS. See also GRADES.

Roads involved have been subjected to certain accidents, washouts, and fires, but none of very great consequence. *Goldfield Cases*, 360 (369).

Where hauls are short or unusual terminal difficulties are encountered arbitrary proportions are not infrequently deducted before prorating and allowed to the line or lines affected thereby. *Louisville Board of Trade v. I., C. & S. T. Co.* 640 (642).

There is no reason for holding that operating difficulties west of Mississippi River constitute a justification for an increase. *Rates on Lumber from Southern Points*, 652 (660).

On the Rock Island not shown to be more difficult now than when rates were reduced. *Id.* (673).

OPERATING EXPENSES.

Of D. & N. M. Ry., discussed. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (505, 508).

OPERATING REVENUES.

Of Duluth & Northern Minnesota Ry., 1913-14. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (506).

"ORDER NOTIFY." See also SHIPPERS ORDER.

Wheat shipped "order, notify" was misrouted, resulting in loss of transit service. *Gray & Smith v. P. Co.* 25.

ORDERS OF COMMISSION.

Provision of Panama Canal act shown. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (73).

ORIGINATING LINE. See CAR FURNISHING.**OUT-OF-POCKET COST.**

Rates proposed will afford some revenue in excess of. *Commodity Rates to Pacific Coast Terminals*, 13 (17).

OVERCHARGES.

That carriers habitually overcharged complainant's members is a matter for criminal proceeding. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (33). In cases before Commission on complaint and answer cognizance may be taken of, only to order their repayment. *Id.* (33).

Refund of \$1 overcharged directed. *Ohio Iron & Metal Co. v. E., J. & E. Ry. Co.* 75.

Refund is due complainant for, on lumber, South Pittsburg, Tenn., to Ohio River crossings. *Haskew Lumber Co. v. N., C. & St. L. Ry.* 333 (335).

On logs from Gold Dust, La., should be refunded. *Brenner Lumber Co. v. M., L. & T. R. R. & S. S. Co.* 630 (633).

OVERPRODUCTION.

Due to overproduction of bituminous coal, certain fields, once prosperous, are now "fighting for their very existence." *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (226).

OWNERSHIP.

Panama Canal act says "does or may compete," and no provision is made with regard to ownership of commodity transported. *S. P. Co. Ownership of Oil Steamers*, 77 (81).

OWNERSHIP OF BOAT LINES. *See* **BOAT LINES.****PACKING.**

Prepared roofing paper is packed in tight, compact rolls. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (6).

Double first-class rating on grapes in baskets, justified. *Blackburg-Warden Co. v. I. O. R. R. Co.* 58 (59).

Demand for tank cars relieve shippers of expense of packing which they may properly be called on to bear. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (192).

A note, providing for wrapping leather with burlap or paper, may be inserted in classification if deemed necessary. *Des Moines Commodity Rates*, 281 (290).

PANAMA CANAL.

One of the primary purposes of building canal was to assist in development and maintenance of an active, efficient, and profitable water service between coasts. *Commodity Rates to Pacific Coast Terminals*, 13 (16).

Shippers and owners of vessels given use of newest avenue of commerce in free and open competition with rail lines. *S. P. Co. Ownership of Oil Steamers*, 77 (80).

PANAMA CANAL ACT. *See also* **BOAT LINES; SECTION 5.**

Powers of Commission. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (73).

Purpose of. *S. P. Co. Ownership of Oil Steamers*, 77 (80).

Must mean that carrier owning boat line and participating in joint transcontinental rates would be in competition with its steamers operating through the canal. *Id.* (80-81).

PAPER RATES.

Respondent states that no logs have moved, or can move, except occasionally; but it was shown that there are tracts of timber which may possibly find an outlet. *Rates on Logs from Stuttgart, Ark.*, 216.

Domestic rates on wood pulp from Boston said to be. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323 (325).

Production of liquozone has been stopped, and rule should be eliminated. *Western Trunk Line Rules*, 554 (555).

Alleged preferential rates to St. Louis and Cincinnati evidently exist unused. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (637).

PAPER TRANSACTIONS. *See also* **DEVICE.**

The billing to and rebilling from Kiowa, Kans., were mere *pro forma* and paper transactions to defeat the through rate. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.* 271 (276).

PARALLELING ROUTES. *See* **COMPETITION (RAIL AND BOAT LINES).****PARCEL-POST MATTER.**

Rule providing in effect for a carload rating on, not justified. *Western Trunk Line Rules*, 554 (558).

PARITY OF RATES.

If distance alone were controlling, rates to Cairo from both sides of the river should be on a parity. *Rates on Lumber from Southern Points*, 652 (677).

PARTIES. *See also* **DAMAGES; CONFERENCE.**

No order with respect to specific rates for future entered because of defect in parties defendant. *Meech & Stoddard v. G. T. Ry. of Can.* 89 (40).

No order entered fixing rates, as East St. Louis Connecting Ry. would be a necessary party thereto. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74).

PARTIES—Continued.

Neither complainant nor its members have been damaged, and the interest of the actual shippers being indicated only by testimony of a single witness, reparation is denied. *Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.* 208 (211).

Erie R. R. Co. a proper and necessary applicant under section 5 by reason of stock ownership in *C. & E. R. R. Co.* *C. & E. R. R. Co. Ownership of Water Equipment*, 218 (219).

Complainants charged freight charges back to consignors and are not entitled to reparation. *Bascom-French Co. v. A., T. & S. F. Ry. Co.* 388 (389).

PAST RATES. See also RESTORED RATES.

Rates on coal from Crooksville and Hocking districts for past 10 years. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (99).

PEDDLER CARS.

Rule providing for free return of accessories used for meats and perishable freight in peddler cars should be in consonance with the Cummins amendment. *Western Trunk Line Rules*, 554 (568).

PENAL STATUTE.

The 28-hour law is a penal statute. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

PENALTY CHARGE.

For nonfulfillment of certain obligations to vendee is in the nature of consequential damages, and recourse must be had to the courts. *Este Co. v. A. C. L. R. R. Co.* 469.

PER DIEM.

Expenses in operating through routes with water line, estimated. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (72).

PERCENTAGE RATES.

From Buffalo-Pittsburgh zone and points west thereof to Atlantic seaboard the basic rate is that from Chicago to New York, other points in west taking percentages thereof. *City of Danville, Va., v. S. Ry. Co.* 430 (484).

St. Louis and group settled at 117 per cent of the New York-Chicago rates. *St. Louis Terminal Case*, 453 (455).

PERISHABLE FREIGHT.

In order to handle with dispatch apples, fresh fruit, and vegetables, it is necessary to make preparations in advance of movement. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 400 (408).

PICK-UP SERVICE.

Two boats perform a daily pick-up service during fruit season. *S. P. Co. Steamboats on Sacramento River*, 174 (176).

PIPE LINES.

If oil company owns common carrier pipe lines which do or may compete with its steamers, such situation is within Panama act. *S. P. Co. Ownership of Oil Steamers*, 77 (82).

Wharfage charges improperly assessed at Port Aransas, Tex., on imported fuel oil handled from ship to tank through a pipe line. *Magnolia Petroleum Co. v. Channel & Dock Co.* 330 (332).

PLACEMENT. See LINE-HAUL RATES; SPOTTING CARS.**PLANT SERVICE. See also SPOTTING CARS.**

Trunk line carriers can not lawfully compensate shipper directly or indirectly where service is a plant service. *Second Industrial Railways Case*, 596 (601).

POINTS OFF LINE.

Carrier may unjustly discriminate against, by participation in joint rates. *S. P. Co. Ownership of Oil Steamers*, 77 (80).

POOL CARS.

Many so-called pool cars are consigned to transfer companies, warehouses, and distributing agencies on Pacific coast. *Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co.* 262 (265).

POPULATION.

Peoria and Canton, Ill. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90.

Great shrinkage in, of Rhyolite, Beatty, Goldfield, Tonopah, and outlying mining camps. *Goldfield Cases*, 360 (370).

POSTING.

Failure to post or file tariffs at Newport, Tenn., could only be dealt with in another proceeding. *Spiegle & Co. v. S. Ry. Co.* 448 (449).

POTENTIAL COMPETITION. See COMPETITION.**POWERS OF COMMISSION.**

Only such as were conferred by act to regulate commerce. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

Are limited by terms and spirit of the act. Rates in Chicago Switching District, 234 (241).

The law as to powers of commission has been clearly laid down, and must be loyally accepted and followed. *Id.* (242).

PRACTICE. See CUSTOM.**PREFERENCES AND PREJUDICES. See also DISCRIMINATION.****Articles:**

Furniture rates to Pacific coast terminals not discriminatory. *Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co.* 262 (267).

Localities:

Rate on coke from Durham and Chickamauga, Ga., to Pacific coast found unduly prejudicial to extent it exceeds rate from Birmingham, Ala., district. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10.

A greater difference than 5 cents in rates on vegetables from New Orleans over Southport Junction, a suburb, found unduly prejudicial to New Orleans. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (38).

Middletown, Conn., should take no higher rates on ex lake grain from Georgia Bay ports than Hartford and other New England Points. *Meech & Stoddard v. G. T. Ry. of Can.* 39 (40).

- Discrimination against Canton, Ill., in favor of Peoria in rates on agricultural implements not found undue. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90.

Lower rates to Chicago, Grand Rapids, and other points from middle district of Ohio than from Crooksville district subjects the latter to undue prejudice and disadvantage in violation of section 3. *San Toy Coal Co. v. A., O. & Y. Ry. Co.* 93 (99).

Rates to Lake Erie ports from mines of complainant not found discriminatory as compared with competing districts. *Id.* (101).

Jobbing business in yellow pine at Sioux City has made such substantial development under present rate relationship as to negative claim of discrimination in favor of Omaha. *Lumber Rates from Points in Arkansas*, 102 (104).

Refusal to permit storage in transit on apples at Indianapolis not undue preference or advantage in favor of Chicago, St. Louis, and other western cities. *Indianapolis Chamber of Commerce v. O., C., C. & St. L. Ry. Co.* 267.

Rate on sugar from California points to stations from Vaughn to Clovis, N. Mex., inclusive, is unduly prejudicial to extent it exceeds rate to Tucumcari. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (314).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Rates on cedar shingles from points in Oregon, Washington, Idaho, and Montana to points in Iowa found unjustly discriminatory. *R. R. Comra. of Iowa v. A., T. & S. F. Ry. Co.* 111.

Rate of 87 cents on coal to Chicago from mines in Sullivan-Linton group of Indiana not found unduly discriminatory as compared with 77-cent rate from Brazil-Clinton district. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221.

Transportation advantage of reshipping rates from St. Louis not undue in its effect upon Memphis. *Memphis Grain & Hay Asso. v. I. C. R. R. Co.* 315 (318).

Through transcontinental commodity rates not unduly preferential to points between Portland and Tacoma. *Gile & Co. v. S. P. Co.* 319.

Rates on lumber to Ohio River and Mississippi River crossings not unjustly discriminatory against South Pittsburg, Tenn., in favor of Chattanooga. *Haskew Lumber Co. v. N., C. & St. L. Ry.* 333.

By maintaining interstate rates higher than intrastate rates an unjust and unlawful discrimination is effected against interior Missouri and southern Illinois points and East St. Louis in favor of St. Louis from which carriers are ordered to cease and desist. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341.

Rates on wheat and corn from certain stations on the U. P. in Nebraska to St. Joseph and Kansas City, Mo., and Leavenworth, Kans., not unjustly discriminatory. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381.

Delta, Olathe, Montrose, Hotchkiss, and Paonia, Colo., not found prejudiced by lower rates to Aspen and Leadville. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409 (411).

Adjustment on bituminous coal from Fairmont and Westmoreland regions is not shown to subject complainant to undue prejudice and disadvantage. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (422).

General adjustment of rates from West, East, or South not found to result in undue prejudice or disadvantage to Danville in favor of Virginia cities. *City of Danville, Va., v. S. Ry. Co.* 430 (440).

Milling in transit with back-haul charge in effect at Newport, Tenn., not shown to result in undue preference or advantage to Johnson City or Bristol. *Spiegle & Co. v. S. Ry. Co.* 448 (451).

Now, as in 1912, carriers unlawfully prefer cities of eastern Texas and unjustly discriminate against Shreveport. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (475).

It constitutes unjust discrimination, distance considered, to charge higher inbound rates on uncompressed cotton for concentration at Shreveport than to concentration points in eastern Texas. *Id.* (480).

Through all-rail rate on wheat from Minneapolis, milled in transit at Hilledale or Litchfield, Mich., forwarded thence as flour to New York, is unduly prejudicial. *Stock & Sons v. C., M. & St. P. Ry. Co.* 481 (483).

To charge Spartanburg higher rates than to Charlotte, via Charleston, is unjustly discriminatory. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (490).

All-rail rates to Spartanburg which exceed those to Charlotte by more than rates to Spartanburg from Virginia cities exceed rates to Charlotte are discriminatory. *Id.* (492).

Rates to Spartanburg from and through Ohio and Mississippi River crossings and through Asheville which exceed rates to Charlotte are unjustly discriminatory. *Id.* (498).

PREFERENCES AND PREJUDICES—Continued.**Localities—Continued.**

Rates to Spartanburg from Buffalo-Pittsburgh territory and from Virginia cities not found unjustly discriminatory. *Id.* (499).

Complaint alleging that grain and flaxseed rates subject Milwaukee to undue prejudice and disadvantage as compared with Minneapolis, dismissed. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581.

Alleged preferential rates on imported oils to St. Louis and Cincinnati evidently exist unused and therefore are without prejudice to Kansas City. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (637).

The Texas & Pacific Ry. must be held responsible for any unjust discrimination against Paducah or any undue preference to Cairo in its joint through rates with the Illinois Central from points in yellow-pine blanket. Rates on Lumber from Southern Points, 652 (671).

Persons:

Country elevators not discriminated against in favor of terminal elevators. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (66).

Refusal to establish through routes and joint rates is unduly prejudicial to water line under section 3. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74).

Cancellation of through routes and joint rates would result in unjust discrimination against the tunnel company, the lighterage company, and shippers and consignees located on their lines. Rates in Chicago Switching District, 234 (241).

The advantage enjoyed, in their private capacity, by warehousemen conducting off-track stations for carriers, is incidental and not undue. *St. Louis Terminal Case*, 453 (462).

Unjust discrimination resulting from limitations upon certain shippers in connection with receipt and delivery of freight at undefined points on west bank of Mississippi River must be corrected. *Id.* (466).

PREPAYMENT. See also FREIGHT CHARGES.

New rule relative to prepayment of charges, approved. *Western Trunk Line Rules*, 554 (574).

Cancellation of rule requiring, on emigrant movables, approved. *Id.* (577).

PRICE.

Price relationship of fir lumber from far West and yellow pine from southwestern blanket is close. *Lumber Rates from Points in Arkansas*, 102 (105).

PRIVATE CARS.

Cars leased by shippers or private car lines will be regarded as controlled by carriers. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (193).

Carrier not bound to accept for use unless it chooses to do so. *Id.* (194).

PRIVATE SIDINGS.

"Commercial" stations are analogous to. Rates in Chicago Switching District, 234 (236).

PRODUCTION. See also OVERPRODUCTION.

Approximately 250,000,000 barrels of crude oil are produced annually in the United States. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (180).

Since 1906 Michigan production of gypsum rock and gypsum products has remained practically stationary, and is now exceeded by New York and Iowa. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (203).

Of coal in Sullivan-Linton field. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (225).

Brazil-Clinton group now has an equal output, and will have the advantage of Sullivan-Linton field, both in quality and differential. *Id.* (225).

PRODUCTION—Continued.

Output of furniture factories at Grand Rapids valued at about \$15,000,000 annually. Furniture Mfrs. Asso. of Grand Rapids *v. A. A. R. R. Co.* 262 (264).

Apple output of official classification territory. Indianapolis Chamber of Commerce *v. C., C., C. & St. L. Ry. Co.* 267 (270).

Output of plants in Lehigh cement district has been a little over 60 per cent of capacity. Alpha Portland Cement Co. *v. B. & O. R. R. Co.* 414 (415).

Heavier production of hardwood is in the so-called delta section. Rates on Lumber from Southern Points, 652 (682, 685).

Heaviest production of gum lumber is in Arkansas and Mississippi. *Id.* (690).

PROFIT.

None has accrued or now accrues to any owners of stock of lighterage company.

Rates in Chicago Switching District, 234 (238).

PROHIBITIVE RATES.

Addition to cost of oil when transported in barrels makes that method prohibitive.

Pennsylvania Paraffine Works *v. P. R. R. Co.* 179 (181).

PROPORTIONAL RATES.

East St. Louis to Virginia ports on grain and its products. Kansas City Missouri River Nav. Co. *v. C. & O. Ry. Co.* 67 (70).

Authority granted to establish same scale of rates as authorized by former order to apply on traffic moving between additional Iowa cities and points east of Indiana-Illinois state line. Proportional Class Rates to Iowa Points, 278.

Complaints involving Des Moines' proportional rates dismissed without prejudice. Des Moines Commodity Rates, 281 (286).

Carriers' necessities could be met by publication of, to El Paso or joint through rates to Mexico. Corp. Comm. of New Mexico *v. A., T. & S. F. Ry. Co.* 292 (301).

While reshipping or proportional rates should in all cases be regarded as applicable only for part of a through but suspended movement, local rates can not be limited according to point of origin or rates paid inbound. Merchants Exchange of St. Louis *v. B. & O. R. R. Co.* 341 (351).

Used in making rates to Virginia cities and Carolina territory. City of Danville, Va., *v. S. Ry. Co.* 430 (435).

South of Virginia cities to Spartanburg seem satisfactory. Spartanburg Chamber of Commerce *v. S. Ry. Co.* 484 (499).

Rate is composed of a proportional rate of 25 cents to East St. Louis and of \$2 beyond and is justified. Coal Rates from Illinois Mines to Omaha, 623 (626).

Same increases have been made in proportional and local rates to gateways from southeastern territory. Rates on Lumber from Southern Points, 652 (678).

From southeastern territory the rate to Cairo is of prime importance. *Id.* (697).

PROSPERITY. See also FINANCIAL CONDITION; OVERPRODUCTION; WRAK LINES.

The outlook for future from development of new business for roads involved is gloomy. Goldfield Cases, 360 (370).

Railroads built primarily to serve mining camps can hope for only a limited lease of prosperity. *Id.* (371).

PROTECTION FROM COLD.

Rules and charges in connection with potato shipments, not unreasonable. Miller & Co. *v. N. P. Ry. Co.* 154.

PROTECTIVE SERVICE.

Shipper has option of requiring carrier to furnish or of furnishing service himself.

Miller & Co. *v. N. P. Ry. Co.* 154 (157).

PUBLIC INTEREST.

Question of through routes a matter of, and not limited to interests of contending parties. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (73).

The trap-car service has developed until the movement of less-than-carload shipments by this means is of great magnitude, and with respect to which commercial and transportation interests of country are vitally interested. *Trap or Ferry Car Service Charges*, 516 (527).

Distribution of terminals tends to prevent undue concentration of industries and consequent concentration of population, thus aiding the solution of one of our social problems. *Car Spotting Charges*, 609 (619).

PUBLICITY.

Attention directed to views of Commission respecting publicity of proposed changes and method of classification procedure. *Western Trunk Line Rules*, 554 (579).

PUBLISHED RATES.

Carriers must take necessary precautions to preserve integrity of. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253 (254).

RAIL AND WATER RATES.

Increased rates, B. & M. points to New York, N. Y., compared with rail and water rates from North Adams, Mass. *Rates on Cotton Piece Goods*, 41 (44).

Rates to Danville from New York and Baltimore. *City of Danville, Va., v. S. Ry. Co.* 430 (437).

RAILROAD COMPETITION. See COMPETITION.**RATE MAKING.**

Manner of making rates from Cincinnati, Louisville, Chicago, St. Louis, and Buffalo-Pittsburgh zone to Danville, in Carolina territory, and Lynchburg, in Virginia cities territory, and to Baltimore, discussed. *City of Danville, Va., v. S. Ry. Co.* 430 (435).

RATE WARS.

On coal from interior group mines prior to 1910 due largely to efforts of Southern Ry. to protect mines on its rails. *Coal Rates from Illinois Mines to Omaha*, 623 (625).

RATE YARDSTICK.

Complainant accepts grain rates to Milwaukee and Chicago via Minneapolis as yardsticks. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581 (583).

REARGUMENT. See also REHEARING; SUPPLEMENTAL REPORTS.

Previous decision with respect to lost articles modified. *Larkin Co. v. E. & W. Transp. Co.* 106.

Original report and order prescribing reasonable maximum rates to Coffeyville and Independence, Kans., not modified. *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.* 231.

Original report and order adhered to. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253.

Former order modified to authorize establishment from certain Iowa points to points in Kansas rates not less than those in effect on May 31, 1911. *Iowa Board of R. R. Comrs. v. A. E. R. R. Co.* 379.

Conclusions expressed in Commission's second report in this proceeding, 32 I. C. C., 521, should not be changed. *Northbound Rates on Hardwood*, 708.

REASONABLENESS OF RATES. See also COMPENSATORY RATES; MEASURE OF RATES.

It is not decided whether rates from Canton, Ill., are or are not unreasonable *per se*. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (92).

REASONABLENESS OF RATES—Continued.

Rates not found unreasonable *per se*. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (99).

Question of reasonableness of oil rates reserved. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.* 271 (277).

The fact that a rate is difficult to compute can have no weight in determining whether or not it is reasonable in amount. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393 (399).

Rates held unreasonable. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3; *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.* 120; *Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146; *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158; *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197; *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292; *Gile & Co. v. S. P. Co.* 319.

Rates held not unreasonable. *Brantley Co. v. A. C. L. R. R. Co.* 21; *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (35); *City of Charlotte, N. C., v. S. Ry. Co.* 128; *Moore & Thompson Paper Co. v. B. & M. R. R.* 323; *Goldfield Cases*, 360; *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381; *Louden Machinery Co. v. A., T. & S. F. Ry. Co.* 383; *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393; *Same v. Same*, 400; *Same v. Same*, 409; *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414; *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634; *Echols & Co. v. A. & W. Ry. Co.* 644.

REBATES.

Only the courts are empowered to enforce provisions of a contract, even though interpretation thereof involves the question of rebating. *McArthur Bros. Co. v. E. P. & S. W. Co.* 30 (31).

Provision of section 15 under which shippers may be compensated by trunk lines for their facilities is left to be used as a cloak for various payments which otherwise would be looked upon as rebates. *Second Industrial Railways Case*, 596 (608).

RECEIPT AND DELIVERY. See INDUSTRIES; LINE-HAUL RATES; SPOTTING CARS.**RECOMMENDATIONS. See CONGRESS.****RECONSIGNMENT.**

Charges on sugar from Memphis, Tenn., to Asheville, N. C., reconsigned to Charleston, S. C., not unreasonable. *Great Western Sugar Co. v. Y. & M. V. R. R. Co.* 45.

To apply to a reconsigned shipment a higher specific through rate to final destination than was applicable to such destination on a direct shipment, held not unreasonable. *Id.* (46).

Shipment reconsigned upon advice of carrier's agent that lowest rate between origin and final destination would apply held not to differ materially from a case involving merely a misquoted rate, and complaint dismissed. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 122.

Carriers have filed tariff provision for a charge of \$3 per car, without \$1 per car per day for detention, when protective service is furnished by them. *Miller & Co. v. N. P. Ry. Co.* 154 (156).

Bituminous coal en route from La Follette, Tenn., to Vermilion, S. Dak., was ordered reconsigned to Ghent, Minn. Carrier failed to observe instructions, although notice was received before car left point of reconsignment. Reparation awarded. *Reeves Coal Co. v. P. M. R. R. Co.* 621.

Tariff applicable to, at Ludington, Mich., should be revised to make definite shippers' rights, and to eliminate attempt to disclaim responsibility for acts of agents. *Id.* (622).

REDUCTION IN RATES.

California-Arizona sugar rates. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (160).

Reasonable rates prescribed on grain products from Inman, Kans. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (200).

Rates on box shooks, Williams to Clifton, Ariz., prescribed. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (259, 261).

Rate on cherry lumber should not exceed fourth class. *Des Moines Commodity Rates*, 281 (288).

Reasonable rates on named classes and commodities to New Mexico points, prescribed. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292.

Reasonable rates on hay from Pecos Valley, and on lumber thereto, prescribed. *Id.* 292.

Orders of this Commission and of state commission have had the effect of reducing rates to Nevada points. *Goldfield Cases*, 360 (370).

Rate on lumber, etc.; from Texas and Louisiana to Las Cruces, N. Mex., should not exceed 28 cents. *Bascom-French Co. v. A., T. & S. F. Ry. Co.* 388.

Rate of \$2.10 per ton prescribed as maximum on coal to Danville. *City of Danville, Va., v. S. Ry. Co.* 430 (441).

Carriers reduced joint rates from Cincinnati and local rates from Virginia cities to Spartanburg following a conference with shippers. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (495).

That a general reduction in oil rates to Arizona will not benefit consumers because producers will advance the price to absorb the reduction is not a sound defense. *Pacific Creamery Co. v. S. P. Co.* 586 (590-591).

REFRIGERATION.

For vegetable traffic. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (34).

Proposed new charges on perishable commodities, iced by shipper and delivered to carrier with specific notice not to reice in transit, not justified. *Westbound Transcontinental Refrigeration Charges*, 140.

Increased charges per car for reicing in transit of shipments from Missouri River territory to north Pacific coast, Spokane, and Montana territories, justified. *Id.* 140.

Average weight of ice and salt per car, and average bunker capacity, considered. *Id.* (144).

Evidence concerning half-tank refrigeration for apples does not indicate that charges are unreasonable. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 400 (406).

Carriage of ice, unless included in transportation rate, is a part of the cost of refrigeration. *Id.* (407).

Charges on apples, fresh fruit, and vegetables, not found unreasonable. *Id.* (408).

REFRIGERATION EQUIPMENT. See INSULATED CARS.**REFUND. See LOST TICKET.****REFUSED SHIPMENT.**

Was reconsigned, and understanding that lowest rate between origin and final destination would apply does not differ materially from a case involving a misquoted rate. *Reeves Coal Co. v. C., M. & St. P. Ry. Co.* 122 (123).

REHEARING. See also REARGUMENT; SUPPLEMENTAL REPORTS.

Reasonable through transcontinental commodity rates to Willamette Valley prescribed. *Gile & Co. v. S. P. Co.* 319

Petition of Duluth & Northern Minnesota Railway that it be released from Commission's order, denied. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500.

REHEARING—Continued.

Reasonable rates on fuel oil, refined oils, and engine distillate from California, Kansas, and Texas to Arizona, prescribed. *Pacific Creamery Co. v. S. P. Co.* 586.

REICING. See also REFRIGERATION.

It can not be said that respondents are entitled to furnish refrigeration in transit or that a new kind of transportation service is required. *Westbound Transcontinental Refrigeration Charges*, 140 (142).

Shipments reiced in transit require more refrigerating materials, the haul of greater total weights of ice, extra switching to and from ice houses, more supervision, and involve greater risk than shipments not reiced. *Id.* (143).

RELATIVE ADJUSTMENT.

History of rate adjustment from Ohio coal fields to Chicago and Grand Rapids. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (95).

Sioux City and Omaha. *Lumber Rates from Points in Arkansas*, 102 (104).

Adjustment of rates as between Grand Rapids and Fort Dodge to northern Illinois and southern Wisconsin bristles with inequalities, which must be eliminated. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (205, 207).

Original order fixing the relationship of rates between Coffeyville and Independence and other Kansas cities, not modified. *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.* 231 (232).

All New Mexico rates should bear a reasonable relation to rates to other points in west and southwest prescribed by Commission. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (304).

Pecos Valley rates should bear a reasonable relation to Amarillo rates and other rates in New Mexico. *Id.* (304).

Interstate rates from interior Missouri points to St. Louis should not be changed without due consideration of the relation of rates to and from St. Louis with rates to and from Memphis. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (356).

Present rates from Omaha to Kansas destinations under consideration, which are now same as rates from Kansas City, are not unreasonable. *Iowa Board of R. R. Comrs. v. A. E. R. R. Co.* 379.

No justification appears for rates to Las Cruces, N. Mex., not related reasonably to rates to El Paso and Deming. *Bascom-French Co. v. A., T. & S. F. Ry. Co.* 388 (389).

It does not appear that the rate on coal to Martins Creek is out of line with the adjustment of bituminous coal rates to the east. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (419).

The general adjustment of rates between Danville, Va., and points in the west, east, and south not found unreasonable. *City of Danville, Va., v. S. Ry. Co.* 430.

Danville should be given grain and flour rates from Ohio River crossings on same relationship as exists between said crossings in rates to Greensboro, N.C. *Id.* (440).

Relationship in grain rates to Minneapolis and Milwaukee thence to lake ports, have been determined in prior cases. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581 (585).

RELATIVE RATES. See also CLASSIFICATION; RELATIVE ADJUSTMENT.

Rates and distances from St. Louis and Kansas City to Muskogee, Tulsa, and McAlester, compared with same to various other points. *Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co.* 3 (4).

Rates on lettuce from New Orleans and various points to Chicago and other points, compared. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (35).

RELATIVE RATES—Continued.

Rates from points on B. & M. to New York compared with rates applying locally.

Rates on Cotton Piece Goods, 41 (42).

Rates on cast-iron pipe from East Radford and Lynchburg, Va., and Anniston, Ala., to Charlotte, N. C., and Rock Hill, S. C., not found unreasonable. *City of Charlotte, N. C., v. S. Ry. Co.* 128.

Present disparity between rates from Peoria and Canton, Ill., is not undue. *Parlin & Orendorff Co. v. I. C. R. R. Co.* 90 (92).

Rates on lumber from Spokane to Butte over lines of N. P. and O., M. & St. P. Railways, found unreasonable and rates prescribed. *Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146.

Reductions in rates on sugar from Los Angeles and San Francisco, Cal., to Arizona points, shown. *Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.* 158 (160).

Representative rates under structure known as the "higher Kansas City rate basis," which controls rates from Kansas grain fields to southwestern Missouri, compared. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (199).

Rates on plaster, etc., from Grand Rapids, Mich., relatively higher than from Fort Dodge, Iowa, to points in northern Illinois and southern Wisconsin, not warranted. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (206).

Rates from points in same vicinity vitiate contention that rates in issue may be used detrimentally to respondents in rate comparisons. Rates on Logs from Stuttgart, Ark., 216 (217).

The rate on box shooks from Williams, Ariz., through Phoenix, to Clifton should not exceed the rate to Globe. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (259).

Rate on box shooks, Williams, Ariz., through Deming, to Clifton, unreasonable as compared with the San Pedro rate. *Id.* (260).

Rates on various commodities to Des Moines compared with rates to Omaha and Davenport. *Des Moines Commodity Rates*, 281 (285).

Rates on classes and commodities from Kansas City, St. Louis, and Chicago to points in New Mexico, Texas common points, Colorado common points, Utah common points, and Phoenix, Ariz., compared. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (296, 306).

Rates on domestic and imported wood pulp, Boston to various New England points, compared. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323 (324).

Table showing advantage which St. Louis enjoys over interior Missouri points, East St. Louis, or points in southern Illinois. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (349).

To Tonopah and Goldfield are materially higher than rates for like distances to many other points in the country for reasons shown. *Goldfield Cases*, 360 (373).

Rates on wheat and corn from U. P. stations not unreasonable as compared with Burlington stations. *Nebraska State Railway Comm. v. U. P. R. R. Co.* 381 (382).

Class and commodity rates from St. Louis to Pueblo, Grand Junction, and Montrose, Colo., Salt Lake City, Nevada points, and San Francisco, compared. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393 (396, 397).

No finding of unreasonableness can be made as to rates to Delta, Olathe, Montrose, Hotchkiss, and Paonia, Colo., as contrasted with rates to Colorado common points, Utah common points, etc. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 409 (413).

Rates from Cincinnati, Louisville, Chicago, St. Louis, and Pittsburgh to Danville and Lynchburg, compared. *City of Danville, Va., v. S. Ry. Co.* 430 (435, 436).

RELATIVE RATES—Continued.

Rates from southern points to Danville and Virginia cities, compared. *Id.* (437).
 All-rail and ocean-and-rail from Boston, New York, Philadelphia, and Baltimore to Charlotte, Spartanburg, Athens, and Atlanta, shown. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (485).

Tables showing differences in rates in favor of Charlotte representing the discrimination against Spartanburg. *Id.* (488).

Distance and ton-mile earning comparisons made between Springfield and Belleville groups, and with traffic from Pittsburg, Kans., Rich Hill, Mo., and Blue Jacket, Okla. *Coal Rates from Illinois Mines to Omaha*, 623 (625).

Comparisons with rates on hogs from and to various points indicate that proposed rates, Utah to California, are not unreasonable. *Rates on Hogs*, 627 (628).

Import rate on coconut, copra, palm and palm-kernel oils from New Orleans to Kansas City not unreasonable as compared with rates to Chicago, Cincinnati, and St. Louis. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.*, 634.

Comparisons show that the advantage in cheese rates is rather with than against Fort Smith, and present rates are not unreasonable. *Echols & Co. v. A. & W. Ry. Co.*, 644 (647).

RENTAL. See also INSULATED CARS.

Shipper should receive no rental for use of car which must be prepared for shipment in a manner peculiarly within the technical knowledge of men connected with that industry. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (193).

REPAIRING.

Required on about 50 per cent of cars furnished. *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.* 60 (63).

Not unreasonable to expect shipper to make minor and inexpensive repairs. *Id.* (64).

RES ADJUDICATA.

Rates on paper and paper articles, iron and steel articles, and bottles have been passed upon in other cases. *Des Moines Commodity Rates*, 281 (288-289).

Relationship in grain rates to Minneapolis and to lake ports has been determined in prior cases, and motion to dismiss proceeding was well made. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 581 (585).

Commission's approval of the blanket rate in *Chicago Lumber & Coal Co. case* was expressed with an important qualification. *Rates on Lumber from Southern Points*, 652 (662).

RESHIPPING RATES.

The transportation advantage of, from St. Louis to Mississippi Valley on grain and mixed feed is no longer undue in its effect upon Memphis grain dealers. *Memphis Grain & Hay Asso. v. I. C. R. R. Co.* 315.

Illustrative tests show that to most important Mississippi Valley points proposed reshipping rates would be unremunerative. *Id.* (318).

In absence of local or flat rates from St. Louis proper shipments of grain and products are entitled to move out on reshipping rates "regardless of the point of origin and * * * rate paid on inbound shipment." *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341.

RESTORED RATES.

Former order modified to authorized establishment of rates from certain Iowa points to points in Kansas on and north of the main line of A., T. & S. F. Ry. not less than those in effect on May 31, 1911. *Iowa Board of R. R. Comrs. v. A. E. R. R. Co.* 379.

Period of suspension expired, and suspended rates, now held unreasonable, became effective. Prior rates restored. *Echols & Co. v. A. & W. Ry. Co.* 644 (646).

RETURNED EMPTIES.

Rule providing for one-half fourth class on returned mineral water carboys, canceled. *Western Trunk Line Rules*, 554 (559).

RETURNED SHIPMENTS.

Rule providing for free return of shipments, damaged in transit, for repairs or reconditioning should be continued. *Western Trunk Line Rules*, 554 (568).

REVENUE. See also EARNINGS.

From Bakers Mill, Fla., to Blackshear, Ga., the raw sea-island cotton earns more revenue than the products. *Brantley Co. v. A. C. L. R. R. Co.* 21 (23).

That carriers' revenue would be increased does not alone justify cancellation of present rates if proposed rates are not reasonable and free from unjust discrimination. *Transit Rates on Logs and Staves from Alexandria, La.*, 169 (171).

Proportion of revenue received by various lines serving Nevada points on traffic from east and west. *Goldfield Cases*, 360 (364).

Revenues derived from traffic on four Nevada roads serving Tonopah and Goldfield have not afforded any unreasonable profit to builders thereof. *Id.* (373).

It does not follow from the fact that southwestern lines are not prosperous that they should get all or any additional revenue by means of an increase in rates on lumber, for lumber may now be contributing its fair share. *Rates on Lumber from Southern Points*, 652 (658).

RISK.

Shipments reiced involve greater risk than those not. *Westbound Transcontinental Refrigeration Charges*, 140 (143).

SCRAP.

Old or used antimonial lead stereotype plates, made of specially prepared metal containing just the requisite amount of antimony to meet requirements of a business and which may be remelted and used without further preparation, is not mere scrap lead. *Western Newspaper Union v. A. & R. R. R. Co.* 326 (329).

SECOND-HAND ARTICLES.

Rule providing for one-half fourth class on second-hand bottles, canceled. *Western Trunk Line Rules*, 554 (558-559).

Class A rates on second-hand thrashing outfits, authorized. *Id.* (570).

SECTION 1. See also COMMODITIES CLAUSE.

New Orleans Shippers' Asso. v. I. C. R. R. Co. 32; *Second Industrial Railway Case*, 596 (604); *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (69, 74); *City of Charlotte, N. C., v. S. Ry. Co.* 128 (129); *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (184); *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (203); *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (303); *Haskew Lumber Co. v. N., C. & St. L. Ry.* 333; *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (358); *Grain Elevation Allowances at Kansas City*, 442 (445, 446).

SECTION 2. See also DISCRIMINATION.

New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (33); *City of Charlotte, N. C., v. S. Ry. Co.* 128 (129).

SECTION 3. See also PREFERENCES AND PREJUDICES.

New Orleans Shippers' Asso. v. I. C. R. R. Co. 32; *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (74); *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (99); *City of Charlotte, N. C., v. S. Ry. Co.* 128 (129); *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (303); *Haskew Lumber Co. v. N., C. & St. L. Ry.* 333; *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (358).

SECTION 4. *See also* LONG AND SHORT HAUL; THROUGH AND LOCAL.

Durham Coal & Iron Co. v. C. of Ga. Ry. Co. 10 (11); **Commodity Rates to Pacific Coast Terminals**, 13; **New Orleans Shippers' Asso. v. I. C. R. R. Co.** 32 (37); **Rates on Cotton Piece Goods**, 41 (42); **Parlin & Orendorff Co. v. I. C. R. R. Co.** 90 (92); **R. R. Comrs. of Iowa v. A., T. & S. F. Ry. Co.** 111 (115); **City of Charlotte, N. C., v. S. Ry. Co.** 128 (130); **Dewey Bros. Co. v. P., C., C. & St. L. Ry. Co.** 135; **Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.** 146 (147); **Arizona Corp. Comm. v. A., T. & S. F. Ry. Co.** 158 (159); **Enns Milling Co. v. C., R. I. & P. Ry. Co.** 197 (198); **Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.** 202 (205); **Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.** 208 (209); **Proportional Class Rates to Iowa Points**, 278; **Des Moines Commodity Rates**, 281 (286); **Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.** 292; **Iowa Board of R. R. Comrs. v. A. E. R. R. Co.** 379; **Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.** 393 (399); **Same v. Same**, 409 (413); **Spartanburg Chamber of Commerce v. S. Ry. Co.**, 484 (491); **Rates on Lumber from Southern Points**, 652 (670).

SECTION 5. *See also* BOAT LINES; PANAMA CANAL ACT.

P. Co. Operation of Pennsylvania-Ontario Transp. Co. 47; **G. T. Ry. Co. of Canada Operation of Car Ferry Co.** 49; **B. R. & P. Ry. Co. Operation of Car Ferry Co.** 52; **G. T. W. Ry. Co. Operation of Car Ferry Co.** 54; **S. P. Co. Ownership of Oil Steamers**, 77; **A. A. R. R. Co. Operation of Car Ferry Boats**, 83; **P. M. and B. & L. E. R. R. Cos. Operation of Car-Ferry Boats**, 86; **O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co.** 165; **S. P. Co. Steamboats on Sacramento River**, 174; **Erie R. R. Co. Operation of Lake Keuka Nav. Co.** 212; **C. & E. R. R. Co. Ownership of Water Equipment**, 218; **Joint Ownership and Operation of Mackinac Transp. Co.** 229; **S. P. Co. Ownership of Stock in Transp. Co.** 648.

SECTION 6.

New Orleans Shippers' Asso. v. I. C. R. R. Co. 32 (33); **Transportation and Disposal of Waste Materials**, 337 (339).

SECTION 12.

Pennsylvania Paraffine Works v. P. R. R. Co. 179 (184).

SECTION 13.

Pennsylvania Paraffine Works v. P. R. R. Co. 179 (188).

SECTION 15.

Pennsylvania Paraffine Works v. P. R. R. Co. 179 (184, 188); **Grain Elevation Allowances at Kansas City**, 442 (447); **Second Industrial Railways Case**, 596 (607, 608); **Rates on Lumber from Southern Points**, 652 (674).

SECTION 16.

Pennsylvania Paraffine Works v. P. R. R. Co. 179 (188).

SECTION 20. *See also* CUMMINS AMENDMENT.

Larkin Co. v. E. & W. Transp. Co. 106 (110); **Miller & Co. v. N. P. Ry. Co.** 154 (157); **Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co.** 511 (513); **Western Trunk Line Rules**, 554 (568).

SEPARATION OF CHARGES.

There may be a growing need for separation of charges for line haul from charges for terminal services. **Car Spotting Charges**, 609 (620).

SERVICE. *See also* FREE SERVICES.

For each rate a carrier offers and obligates itself to perform a certain amount of; and that rate may be increased or the service curtailed if carrier shows that the new rate or service is reasonable. **Rates in Chicago Switching District**, 234 (242).

"SHIPPER'S ICING PLAN."

Refrigeration under, preferred. Westbound Transcontinental Refrigeration Charges, 140 (144).

"SHIPPER'S LOAD AND COUNT."

So-called, indorsed on bills of lading covering shipments loaded by shipper and not checked by carrier, not found unlawful. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co. 511.

In case cars move through to destinations or distant transfer points, the billing is based on. Trap or Ferry Car Service Charges, 516 (527).

Rule providing that the notation must be entered on bill of lading covering shipments loaded by shippers without check by carrier, may be canceled. Western Trunk Line Rules, 554 (574-575).

SHIPPERS' ORDER.

Cancellation of rule covering delivery of shipments consigned to, approved. Western Trunk Line Rules, 554 (577).

SHORT-LINE DISTANCE.

Chickamauga, Ga., to Pacific coast terminals. Durham Coal & Iron Co. v. C. of Ga. Ry. Co. 10 (12).

Southwestern blanket to Omaha and Sioux City. Lumber Rates from Points in Arkansas, 102 (104).

From various points in West, East, and South to Danville and Lynchburg, Va. City of Danville, Va., v. S. Ry. Co. 430 (433).

New Orleans to Chicago, Cincinnati, St. Louis, and Kansas City. Peet Bros. Mfg. Co. v. I. C. R. R. Co. 634 (636).

To Spartanburg from Savannah, Charleston, Wilmington, and Norfolk. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (486).

Spartanburg takes higher rates than Charlotte from Cincinnati, although short-line distance is less. Id. (497).

Appleton, Wis., to Joplin, Ft. Smith, Texarkana, Shreveport, and Alexandria. Echols & Co. v. A. & W. Ry. Co. 644 (646).

SHRINKAGE.

In weight of beef cattle in transit. Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co. 423 (426).

SHRINKING REVENUE.

Eastern roads do not shrink their revenues in any degree under the through rate on apples stored in transit. Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry. Co. 267 (268).

Lines south of Virginia cities do not feel justified in. Spartanburg Chamber of Commerce v. S. Ry. Co. 484 (493).

SIFTING.

Shipper should refuse to accept car which has many holes or cracks through which grain would sift. Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co. 60 (64).

"SINGLE LINE."

One line of railroad, or two or more lines under same management and control. R. R. Comm. of Louisiana v. St. L. & S. W. Ry. Co. 472 (477).

SOUTHWESTERN TARIFF COMMITTEE.

Joint agency for El Paso lines. Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co. 292 (299).

SOUTHWESTERN YELLOW-PINE BLANKET.

Described. Rates on Lumber from Southern Points, 652 (654).

History of rates from. Id. (655).

SPARSITY OF TRAFFIC.

Number of passenger, total tonnage, and average tonnage per train show sparsity of traffic on lines south of Goldfield. *Goldfield Cases*, 360 (369).

Upon none of the lines cited for comparative purposes has there been shown any such sparsity of traffic or meagerness of revenue as has been shown with respect to lines serving Tonopah and Goldfield. *Id.* (374, 376).

SPECIAL RATES.

Complaint asking restoration of special rates on sea-island seed cotton to Black-shear, Ga., dismissed. *Brantley Co. v. A. C. L. R. R. Co.* 21 (22).

Cottonwood and gum should not be accorded special rates. Rates on Lumber from Southern Points, 652 (690, 693).

SPOTTING CARS.

"Spotting" service is defined in suspended tariffs as the service beyond a reasonably convenient point of interchange between road haul or connecting carrier and industrial plant tracks. *Car Spotting Charges*, 609 (614).

The line-haul rate covers customary placement of cars at factory doors, whether upon an industry spur, private siding, or industrial plant tracks, without regard to size or complexity of the industry, or the fact that an interplant service is required. *Id.* (616, 618).

Car spotting charge covering movement of cars over the Muncie & Western not justified. *Id.* (620).

Carriers may file new tariffs providing for spotting charges in those instances in which terminal services exceed services which under the established custom is, or should be, performed for the line-haul rate. *Id.* (620).

STAKING CARS.

Refusal of carriers to comply with Florida statute providing for allowances to shippers for staking cars in connection with interstate coastwise and foreign shipments, not unlawful. *Shands v. S. A. L. Ry.* 214.

STATE AND INTERSTATE.

The lawfully established interstate rate applies on shipments billed to an intermediate point within the State and rebilled to interstate destination. *Kano-tex Refining Co. v. A., T. & S. F. Ry. Co.* 271.

Difference between State and interstate rate inbound represents advantage of St. Louis if permitted to use intrastate rates inbound and reshipping rates outbound. *Merchants Exchange of St. Louis v. B. & O. R. R. Co.* 341 (345).

While St. Louis shippers can not be denied benefit of intrastate rates so long as they are in force, that does not preclude a finding that intrastate rates effect an unjust discrimination against interstate traffic. *Id.* (353).

Rates of various States on wheat, flour, and corn, compared. *Id.* (355).

Record not sufficient to justify a determination as to reasonableness of interstate rates from interior Missouri points. *Id.* (355).

The intrastate movement to St. Louis can not be tied up to the outbound movement in such manner as to consider the two one through movement. *Id.* (353, 359).

STATE RATES.

The low intrastate rates on sea-island cotton have not been finally determined to be reasonable by either the Georgia or Florida commission. *Brantley Co. v. A. C. L. R. R. Co.* 21 (23).

Rates approved on cotton piece goods and on woolen piece goods by State commissions were third class and second class, respectively. Rates on Cotton Piece Goods, 41 (42).

Respondent is maintaining as to intrastate traffic rates and practices which it is here seeking to change as to interstate traffic. Concentration of Cotton at Alexandria, La., 163 (164).

STATE RATES—Continued.

Unjust discrimination against interstate shippers would result if suspended tariff were to become effective. *Transist Rates on Logs and Staves at Alexandria, La.*, 169 (171).

Rates of boat line on local traffic are subject to jurisdiction of the California commission. Only regular lines are required to file rates with that commission.

S. P. Co. Steamboats on Sacramento River, 174 (177).

Rates from New Orleans to El Paso are controlled by Galveston rates prescribed by Texas commission. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (298).

Rates to Danville are made by use of local rates from Lynchburg prescribed by state commission. *City of Danville, Va., v. S. Ry. Co.* 430 (439).

STATE STATUTE.

A Florida statute provided for allowances to shippers for staking cars. Refusal of carriers to comply therewith in connection with coastwise and foreign trade not unlawful. *Shands v. S. A. L. Ry.* 214.

STOCK OWNERSHIP.

Capital stock of boat line owned jointly by carriers. *P. Co. Operation of Pennsylvania-Ontario Transp. Co.* 47 (48); *G. T. Ry. Co. of Can. Operation of Car Ferry Co.* 49; *B. R. & P. Ry. Co. Operation of Car Ferry Co.* 52.

Interownership of stock of car-ferry company by stockholders, directors, and officers of G. T. Ry. system. *G. T. W. Ry. Co. Operation of Car Ferry Co.* 54 (55).

The fact that the Erie R. R. Co. owns capital stock of the C. & E. R. R. Co., which owns certain water equipment, makes it a proper and necessary applicant under section 5. *C. & E. R. R. Co. Ownership of Water Equipment*, 218 (219).

Stock of Monon Coal Co. is owned by the Monon R. R., and of Consolidated Coal Co. is owned by the C., R. I. & P. Ry. Co. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (225).

Stock of lighterage company largely owned by officers and employees of commercial firms or corporations to whom no profit has accrued. *Rates in Chicago Switching District*, 234 (238).

STORAGE.

Charges on salt at La Grange, Ga., not unreasonable. *Cleveland Salt Co. v. P. Co.* 638.

Charges imposed by warehouses afford no fair criterion of reasonableness of carriers' charges, nor is value of service conclusive. *Id.* (639).

STORAGE IN TRANSIT.

Lines serving Indianapolis are justified in refusing to permit storage in transit on apples at that point. *Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry. Co.* 267.

The storage actually takes place on rails of western roads with respect to both eastbound and westbound traffic. *Id.* (268).

STRIKE.

Large profits made in Sullivan county coal because of the anthracite strike in 1902. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (224).

SUBSTITUTION.

National Casket Co. v. S. Ry. Co., 31 I. C. C., 678, followed with respect to substitution of different kinds of lumber in transit. *Spiegle & Co. v. S. Ry. Co.* 448 (450).

SUPPLEMENTAL REPORTS.

Second supplemental report. *Commodity Rates to Pacific Coast Terminals*, 13.

Third supplemental report. *The Tap Line Case*, 116.

SUPPLEMENTAL REPORTS—Continued.

Original report and order adhered to. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.* 253.

Relief afforded Memphis grain dealers appears incomplete with respect to southwestern producing territory. *Memphis Grain & Hay Asso. v. I. C. R. R. Co.* 315.

No material change in transportation conditions shown. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472.

SUSPENDED RATES.

Period of suspension expired May 7, 1915, and proposed rates, now held unreasonable, became effective. Reparation will be awarded on basis of prior rates. *Echols & Co. v. A. & W. Ry. Co.* 644 (646).

SUSPENDED TARIFFS. See TARIFFS.**SWITCH CONNECTIONS.**

Carriers may be compelled to make connection with spur tracks built by shippers or with lateral lines of railroad and to operate such switch tracks for a reasonable compensation. *Second Industrial Railways Case*, 596 (602).

SWITCHING. See also ABSORPTION.

Addition of an arbitrary for switching service within limits of distances for which maximum allowances of \$2 and \$3 a car were fixed, not permitted. *Tap Line Case*, 116 (118).

For switching required on account of re-icing carriers are entitled to 25 cents per movement. *Westbound Transcontinental Refrigeration Charges*, 140 (144).

Cancellation of absorption of switching charges in Chicago switching district, justified. Rates on Hay to Chicago, 150 (153).

Respondent compelled to pay a switching charge or drayage charge in order to deliver cotton at compress. *Concentration of Cotton at Alexandria, La.* 163 (164).

Petitioners participate in tariffs publishing switching charges to industries and may compete with water equipment serving same. *C. & E. R. R. Co. Ownership of Water Equipment*, 218 (219).

Cancellation of rule covering cars handled in switching movement, approved. *Western Trunk Line Rules*, 554 (576).

SYSTEM.

G. T. Ry. Co. of Canada operates a system in Canada and United States. *G. T. Ry. Co. of Canada Operation of Car Ferry Co.* 49 (50); *B. R. & P. Ry. Co. Operation of Car Ferry Co.* 52 (53).

TANK CARS. See also CAR FURNISHING.

Are an absolute necessity for transportation of refined products, and their use effects an economic gain. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (181).

It can not be contended that transportation by rail of oil in bulk could be attempted safely in any other equipment. *Id.* (187).

TAP LINES.

In case of one or two tap lines in Arkansas, the addition of an arbitrary to trunk line rates has been permitted; but not within limits of distances for which maximum allowances are fixed. *The Tap Line Case*, 116 (118).

Certain industrial lines distinguished from lines in the *Tap Line cases*. *Second Industrial Railways Case*, 596 (604).

Revenues of southwestern lines less impaired by tap-line allowances than a few years ago. Rates on Lumber from Southern Points, 652 (677).

Tap-line divisions were not as general or liberal on hardwood as on yellow pine. *Northbound Rates on Hardwood*, 708 (710).

TARIFFS. See also ALLOWANCES; CONFLICTING RATES; POSTING.

Boat line will be required to file. P. Co. Operation of Pennsylvania-Ontario Transp. Co. 47 (48); G. T. Ry. Co. of Can. Operation of Car Ferry Co. 49 (51); B. R. & P. Ry. Co. Operation of Car Ferry Co. 52 (54); O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co. 165 (168); S. P. Co. Steamboats on Sacramento River, 174 (178); Joint Ownership and Operation of Mackinac Transp. Co. 229 (230).

Must state what materials will be furnished country elevators for grain doors. Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co. 60 (66).

It is unlawful for water line to interchange traffic under any arrangement for through interstate carriage that is not covered by filed tariffs. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co. 67 (73).

Companies operating water service on Lake Erie and Lake Michigan are expected to file tariffs. P. M. and B. & L. E. R. R. Cos. Operation of Car-Ferry Boats, 86 (89).

Act of carriers in changing tariffs before Commission could render a decision in this case was manifestly improper. Mixed Carloads of Lime, Cement, and Plaster, 124 (127).

The Lowrey tariffs was not originated by operation of law, was not the result of any form of adjudication or of any order of the Commission, or of any other Government agency. Rates of Hay to Chicago, 150 (152).

Publishing rates applicable to water service involved must be filed. C. & E. R. R. Co. Ownership of Water Equipment, 218 (220).

No tariff is self-operative to the effectual prevention of possibility of fraud. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co. 253 (254).

Provided for wharfage charges against goods landed on wharves, but contained no provision covering fuel oil handled through pipe line. Magnolia Petroleum Co. v. Channel & Dock Co. 330 (331).

It is a well-established rule that tariffs are to be construed according to their language, and intention of framers is not controlling. Its terms should be clearly stated. Haskew Lumber Co. v. N., C. & St. L. Ry. 333 (335).

Tariff filed by eleven carriers does not comply with section 6 in that it fails to name destination points, and is therefore stricken from the files. Transportation and Disposal of Waste Materials, 337.

It is fundamental that publication of rates should be simplified in every way possible. Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co. 393 (399).

Statements that proposed charges were in response to suggestions of the Commission afford no justification for the hasty preparation and filing of tariffs without proper consideration to avoid ambiguities, conflicts, and unjust discriminations. Trap or Ferry Car Service Charges, 516 (546).

Where provisions are eliminated from one tariff in anticipation of publishing them in another the two tariffs should be amended simultaneously. Western Trunk Line Rules, 554 (580).

Omission of the Louisville & Southern Indiana Traction Ry. Co. as an issuing, participating, or concurring carrier in tariffs here in question should be at once corrected. Louisville Board of Trade v. I., C. & S. T. Co. 640 (643).

Conforming to findings herein may be filed to become effective on five days' notice. Rates on Lumber from Southern Points, 652 (707).

TEAM-TRACK DELIVERY.

Grand Rapids not shown to suffer unjust discrimination in making deliveries in Chicago switching district. Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co. 202 (207).

TECHNICAL KNOWLEDGE.

Such technical knowledge not shown to be needed in shipment of petroleum products as to render unreasonable complainants' request to furnish tank cars. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (193).

TERMINAL FACILITIES.

St. Louis has long been suffering from inadequate terminal facilities. *St. Louis Terminal Case*, 453 (455).

Tracks and loading facilities furnished by shippers relieve carriers' freight stations. *Trap or Ferry Car Service Charges*, 516 (546).

The public interest is served in many ways by permitting carriers to use tracks of industrial plants as a part of their terminal facilities. *Car Spotting Charges*, 609 (619).

TERMINAL RAILROAD ASSOCIATION.

Twenty-one different carriers use track and other facilities of. *St. Louis Terminal Case*, 453 (455).

Owens and controls bridges and ferries across Mississippi River at St. Louis. *Id.* (456).

TERMINAL RATES.

Carriers authorized to extend terminal rates to named Pacific coast ports. *Commodity Rates to Pacific Coast Terminals*, 13 (18).

Terminal charges at New Orleans said to be out of proportion to those at Southport Junction, a suburb. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (38).

TERMINAL SERVICE.

As terminal service it costs carrier no more to transport a car loaded with 4,000 pounds than one loaded with 10,000 pounds. *Trap or Ferry Car Service Charges*, 516 (537).

TERMINALS.

It is the opinion of the business men's association that the transfer allowance made by railroads terminating at East St. Louis to drayage companies for hauling freight to St. Louis retards the development of terminals in St. Louis. *St. Louis Terminal Case*, 453 (463, 464).

Arbitrary allowance before prorating on account of bridge and terminal conditions to be included in minimum division prescribed for lines south of Sellersburg, Ind. *Louisville Board of Trade v. I., C. & S. T. Co.* 640 (643).

TEXAS COMMON POINT TERRITORY.

Described. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (297).

THREE-LINE HAUL.

Both Clifton and Globe involve three line hauls from Williams, Ariz. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (259).

THROUGH AND LOCAL.

Joint class rates on coarse grain from Iowa to Kansas City which exceeded the aggregate of intermediate commodity rates were unlawful. *Board of Trade of Kansas City v. C., M. & St. P. Ry. Co.* 208.

Fourth section violations have been cured, and application for relief is denied. *Id.* (209).

Authority to continue through rates on creosote oil and cherry lumber from Chicago higher than aggregate of intermediate rates to and from Clinton and Dubuque, denied. *Des Moines Commodity Rates*, 281 (288).

Authority to charge joint through rates from eastern points to Spartanburg higher than combinations on Norfolk denied. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (494).

No warrant in law for conclusion that recognition of aggregates of intermediate rates as maxima is required only where the factors thereof have been voluntarily established. *Id.* (494).

THROUGH BILLS OF LADING.

Shipments are made on, with drafts attached. Eastbound Transcontinenta. Cotton Rates, 248 (251).

Traffic for through movement to and from St. Louis received under. St. Louis Terminal Case, 453 (456).

THROUGH CARRIAGE.

Water line participates in a through carriage arrangement from East St. Louis to Kansas City which subjects them to the jurisdiction of the act. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co. 67 (69).

THROUGH MOVEMENT.

The intrastate movement to St. Louis can not be tied up to the outbound movement in such manner as to consider the two a through movement. Merchants Exchange of St. Louis v. B. & O. R. R. Co. 341 (353, 359).

THROUGH RATES. See also DEVICE; FACTOR OF THROUGH RATE.

Lower rates to Hartford and other points on ex lake grain from Georgian Bay ports held unduly prejudicial to Middletown, Conn. Meech & Stoddard v. G. T. Ry. of Can. 39 (40).

To apply to a reconsigned shipment a higher specific through rate to final destination than was applicable to such destination on direct shipment, held not unreasonable. Great Western Sugar Co. v. Y. & M. V. R. R. Co. 45 (46).

A device for defeating the lawful through rate is unlawful. Kanotex Refining Co. v. A., T. & S. F. Ry. Co. 271 (276).

Through transcontinental c. l. and l. c. l. rates to Willamette Valley, made by adding to rates to Portland, Oreg., the local class rates to destination, found unreasonable. Gile & Co. v. S. P. Co. 319.

The through all-rail rate on wheat from Minneapolis, forwarded as flour from Hilldale or Litchfield, Mich., to New York, is unduly prejudicial to Hilldale and Litchfield. Stock & Sons v. C., M. & St. P. Ry. Co. 481.

To territory east of Mississippi River and north of the Ohio River were commonly made on basis of combinations on Thebes or Cairo, and not restricted to any specific route. Rates on Lumber from Southern Points, 652 (673).

No question of, is involved; but only the reasonableness or unreasonableness of the increased rate to Thebes and Cairo. Id. (674).

THROUGH ROUTES AND JOINT RATES.

Make it possible for petitioners to compete with their boat line. P. Co. Operation of Pennsylvania-Ontario Transp. Co. 47 (48).

All-rail through route arrangements make competition possible. G. T. Ry. Co. of Canada Operation of Car Ferry Co. 49 (50); B. R. & P. Ry. Co. Operation of Car Ferry Co. 52 (53); G. T. W. Ry. Co. Operation of Car Ferry Co. 54 (56).

With water line should be established from Kansas City, Mo.-Kana., to Norfolk and Newport News, Va., on grain products when for export. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co. 67 (74).

Obligation to furnish cars is joint upon carriers therein. Pennsylvania Paraffine Works v. P. R. R. Co. 179 (194).

Proposed cancellation of, in connection with Chicago Warehouse & Terminal Company and Merchants Lighterage Company, not justified. Rates in Chicago Switching District, 234.

TICKET. See LOST TICKET; MILEAGE BOOK.**TOLERANCE.**

A tolerance of more than 500 pounds for the weighing of live stock is unreasonable. Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co. 423 (429).

TON PER MILE REVENUE-EARNINGS. See also AVERAGES.

Ton-mile earnings under commodity rates, St. Louis to Oklahoma, Texas, and other points. Hooker-Hendrix Hdwe. Co. v. M., K. & T. Ry. Co. 3 (5).

TON PER MILE REVENUE-EARNINGS—Continued.

- Earnings, Chickamauga, Ga., to Pacific coast terminals. *Durham Coal & Iron Co. v. C. of Ga. Ry. Co.* 10 (12).
- Earnings do not indicate that rates are too high. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (98).
- Various coal districts to Lake Erie ports. *Id.* (100).
- Earnings to Sioux City decrease with increased distance. *Lumber Rates from Points in Arkansas*, 102 (104).
- Earnings on lumber via different routes from Spokane, Deer Park, etc., Wash., to Butte, Mont., etc. *Wilson-Leuthold Lumber Co. v. C., M. & St. P. Ry. Co.* 146 (147).
- Earnings on logs, etc. *Transit Rates on Logs and Staves at Alexandria, La.*, 169 (171).
- Comparison of ton-mile revenues illustrates some of the inequalities in the adjustment as between Fort Dodge, Iowa, and Grand Rapids, Mich. *Grand Rapids Plaster Co. v. L. S. & M. S. Ry. Co.* 202 (206).
- Assumption that rates will be readjusted upon a differential basis computed upon basis of ton-mile earnings, not warranted. *Coffeyville Mercantile Co. v. M., K. & T. Ry. Co.* 231 (232).
- Revenue, Kansas City and St. Louis to El Paso. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (302).
- On domestic and imported pulp from Boston to various New England points. *Moore & Thompson Paper Co. v. B. & M. R. R.* 323 (324).
- Lake Charles, La., to El Paso, Deming, and Las Cruces. *Bascom-French Co. v. A., T. & S. F. Ry. Co.* 388 (389).
- The rule that ordinarily the yield should decrease with distance has full application only where conditions of haul are substantially similar. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 400 (404).
- Ton-mile earnings are in no sense conclusive in determining whether or not rates on a certain commodity are unreasonably low. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (507).
- On imported oils, New Orleans to St. Louis, Cincinnati, Chicago, and Kansas City. *Peet Bros. Mfg. Co. v. I. C. R. R. Co.* 634 (636).
- Comparisons of, under circumstances of this case, do not have the value they ordinarily have. *Rates on Lumber from Southern Points*, 652 (659).

TONNAGE.

- Heavy tonnage of grain and products from Kansas City to and through St. Louis and East St. Louis. *Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co.* 67 (70).
- An increasing tonnage of fir lumber moves to Sioux City from the far West. *Lumber Rates from Points in Arkansas*, 102 (105).
- Handled annually by steamship company, shown. *O.-W. R. & N. Co. Ownership of S. F. & P. S. S. Co.* 165 (167).
- Carried by four principal transportation companies on river for 1912. *S. P. Co. Steamboats on Sacramento River*, 174 (177).
- Ninety per cent of entire tonnage of C., T. H. & S. E. Ry. and 95 per cent of tonnage over track from Linton field to Faithorn consists of coal. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (223).
- Increase of tonnage of mines in Sullivan-Linton field, shown. *Id.* (225, 226).
- Tunnel company handled 275,218 tons of merchandise at its universal stations, and total tonnage was 609,320 tons, during 1914. *Rates in Chicago Switching District*, 234 (236).
- During 1914 the lighterage company handled 134,482 tons of freight. *Id.* (238).

TONNAGE—Continued.

Lumber and lumber mixture tonnage over A. & N. M. is less than 2 per cent of its total. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (260-261).

Decrease in coal and coke tonnage and increase in oil. *Id.* (261).

Sparsity of traffic on lines south of Goldfield, Nev., shown. *Goldfield Cases*, 360 (369).

The bituminous coal tonnage originating on or moving via the Pennsylvania Railroad to the east during 1912 was over 29,000,000 tons. *Alpha Portland Cement Co. v. B. & O. R. R. Co.* 414 (416).

Bituminous coal tonnage handled by the B. & O. and P. R. Rs. to the East during 1912 and 1913. *Id.* (416).

Forest products constitute more than 95 per cent of, on D. & N. M. Ry. *Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co.* 500 (502).

Fuel oil and refined oils hauled into Arizona. *Pacific Creamery Co. v. S. P. Co.* 586 (592, 594).

Grain, brick, and other freight handled by boat line on Sacramento River. *S. P. Co. Ownership of Stock in Transp. Co.* 648 (650).

Tonnage of lumber handled by the Illinois Central, the M. & O., and Y. & M. V. Railroads in 1913. *Rates on Lumber from Southern Points*, 652 (684).

TRACK SCALES.

Impossible to weigh refrigerated shipments accurately on. *New Orleans Shippers' Asso. v. I. C. R. R. Co.* 32 (36).

Hoof-weight practice is in many respects more satisfactory than taking of weights upon track scales. *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423 (427).

TRACK STOPS.

Elevator stops and track stops defined. *Grain Elevation Allowances at Kansas City*, 442 (443).

TRADE CONDITIONS.

The situation in which operators of Sullivan-Linton group find themselves is due not to a rate schedule but largely to a trade condition which has developed in a neighboring field. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (228).

At Grand Rapids, Mich., with respect to furniture. *Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co.* 262 (264).

TRAIN SPEED.

Average time required in train movement. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (223, 224).

TRAINLOAD.

Average train is composed of 80 to 85 cars. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (224).

TRAMP STEAMERS.

El Paso rates said to be influenced by. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (299).

TRANSCONTINENTAL RATES.

Proposed increase justified in part. *Eastbound Transcontinental Cotton Rates*, 248.

Through commodity rates to Willamette Valley and points south of Portland found unreasonable and rates prescribed. *Gile & Co. v. S. P. Co.* 319.

TRANSCONTINENTAL ROUTES. See also PANAMA CANAL ACT.

When Congress enacted Panama Canal act there was no single railroad company nor any system owning or operating rails reaching from Atlantic to Pacific coasts. *G. T. W. Ry. Operation of Car Ferry Co.* 54 (56).

TRANSFER COMPANIES.

Operation of "off-track" freight stations by certain transfer companies in St. Louis as public freight stations of carriers not found unlawful or to result in undue discriminations. *St. Louis Terminal Case*, 453.

TRANSFER STATIONS.

Established for handling and distribution of less-than-carload shipments. *Trap or Ferry Car Service Charges*, 516 (522).

TRANSIT PRIVILEGES. See also COMPRESSION; STORAGE-IN-TRANSIT; SUBSTITUTION.

Misrouting resulted in loss of transit service on wheat but final destination must be shown to determine damage sustained. *Gray & Smith v. P. Co.* 25 (27).

Shipments of grain milled in transit at Trebein, Ohio, under special arrangement were not local shipments from Trebein. *Dewey Bros. Co. v. P., C., C. & St. L. Ry. Co.* 135 (139).

Withdrawal of milling-in-transit rates at points in Louisiana, not justified. *Transit Rates on Logs and Staves at Alexandria, La.* 169.

A withdrawal of transit arrangements can not be sanctioned without the establishment of reasonable and nondiscriminatory rates and practices in lieu thereof. *Id.* (171).

No special conditions exist at Indianapolis that would warrant extension of storage in transit without extending it to all cities in official classification. *Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry. Co.* 267 (269).

Transit on apples not permitted by c. f. a. lines. *Id.* (270).

Grain-producing territory should be made available to Memphis under a transit arrangement, but relief granted appears incomplete with respect to southwestern territory. *Memphis Grain & Hay Asso. v. I. C. R. R. Co.* 315 (318).

Rules and regulations applicable to lumber handled in transit at Newport, Tenn., not found unreasonable. *Spiegle & Co. v. S. Ry. Co.* 448.

No evidence that act has been violated with respect to changes of rules affecting milling in transit of lumber at Newport, Tenn. *Id.* (449).

Footage and weight rule and requirements as to reports are not shown to be unreasonable. *Id.* (450).

All-rail rate on wheat from Minneapolis, milled in transit at Hillsdale or Litchfield, Mich., forwarded thence as flour to New York shall not exceed by more than the established transit charge that applied on flour from Minneapolis. *Stock & Sons v. C., M. & St. P. Ry. Co.* 481 (483).

Cancellation of rules relating to refining and reconsignment of cottonseed products, approved. *Western Trunk Line Rules*, 554 (579).

Rates on logs, milled in transit at Alexandria, La., found unreasonable and unlawful. *Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co.* 630.

"TRANSPORTATION."

Provisions of section 1, discussed. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (184-186).

Elevation included in term, referred to. *Grain Elevation Allowances at Kansas City*, 442 (446).

The act does not require respondents to hire any instrumentality for performance of a transportation service. *Id.* (446).

Is a very practical public service, and laws for its regulation were intended to deal with actual rather than with constructive or imaginary things. *St. Louis Terminal Case*, 453 (465).

TRANSPORTATION CONDITIONS. See also OPERATING CONDITIONS.

Have not changed, but "mines have been developed," and restricted market for coal from Sullivan-Linton group is due not to a rate schedule but to a trade condition. *Monon Coal Co. v. C. & E. I. R. R. Co.* 221 (228).

TRANSPORTATION CONDITIONS—Continued.

No similarity shown between transportation and traffic conditions incident to transportation to Salt Lake City and those attendant upon transportation to Montrose. *Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co.* 393 (399).

No material change in, either from or toward Shreveport, since proceeding was first before Commission. *R. R. Comm. of Louisiana v. St. L. S. W. Ry. Co.* 472 (475).

There is less dissimilarity in conditions east and west of the Mississippi than there was a few years ago. *Rates on Lumber from Southern Points*, 652 (677).

TRAP-CAR SERVICE.

Would not remove discrimination against tunnel and lighterage companies as common carriers which would result from cancellation of through routes and rates. *Rates in Chicago Switching District*, 234 (240).

Term "trap" or "ferry" defined. Both names mean the same thing. *Trap or Ferry Car Service Charges*, 516 (519, 520).

The service in general. *Id.* (520).

Service rendered in connection with substations is comparable with trap-car service rendered to an industry. *Id.* (523).

Rules obtaining in New England, trunk line, and central freight association territories, territory west of the Mississippi River, and at Chicago, Ill., discussed. *Id.* (527, 531, 538, 541).

Trap-car service is of advantage both to shippers and carriers. *Id.* (525).

As compared with drayed shipments rehandled at local stations furnish a delayed service. *Id.* (526).

Average trap car contains loading in excess of 15,000 pounds. *Id.* (526).

Has come to be an organized and definite part of the railroad transportation system of the country, and its efficiency should not be impaired. *Id.* (546).

If charges are made on a per car basis, they may be graded in accordance with amount of service required and rendered and need not be uniform at all points. *Id.* (547).

So-called trap or ferry service is not a free service. *Id.* (547).

There should be no difference with respect to what trap-car service to which charges are applicable shall consist of. *Id.* (547).

Proposed charges found not justified, and carriers are expected to promptly correct tariffs now in effect, removing therefrom ambiguous and unlawful provisions. *Id.* (548).

TUNNEL COMPANY.

Terminal facilities and equipment owned by. *Rates in Chicago Switching District*, 234 (235).

TWENTY-EIGHT-HOUR LAW.

Casts duty to feed and water animals upon carrier only in case of owner's default in so doing. *Streever Lumber Co. v. C., M. & St. P. Ry. Co.* 1 (2).

TWO-LINE HAUL.

Rate over two-line haul to New York compared with local rate to Boston. *Rates on Cotton Piece Goods*, 41 (43).

"Higher Kansas City rate basis" should apply from Inman, Kans., unless two-line service furnishes justification for higher rates. *Enns Milling Co. v. C., R. I. & P. Ry. Co.* 197 (200).

That Texas & Pacific Ry. does not reach Cairo with its own line not conclusive evidence that the joint through rate from the yellow-pine blanket is unreasonable. *Rates on Lumber from Southern Points*, 652 (672).

UNDEFINED POINTS. See CONSTRUCTIVE SERVICE.

UNDERCHARGES.

Waived. Board of Trade of Kansas City *v. C., M. & St. P. Ry. Co.* 208 (209).

Complainant can not lawfully refuse promptly to meet demand for payment of, if correctly stated. Kanotex Refining Co. *v. A., T. & S. F. Ry. Co.* 271 (277).

UNIFORM CLASSIFICATION COMMITTEE.

Certain rules recommended by. Western Trunk Line Rules, 554 (567, 575).

UNIFORM RATES.

Commission has realized the importance of having same rates from the east to all Mississippi River crossings, with uniform basis therefrom to Iowa destinations.

Proportional Class Rates to Iowa Points, 278 (279).

VALUATION.

Estimates of values of lines and equipment not sufficient basis for finding rate on coal to Martins Creek, Pa., unreasonable. Alpha Portland Cement Co. *v. B. & O. R. R. Co.* 414 (420).

Of the D. & N. M. Ry. in 1914. Pulp & Paper Mfrs. Traffic Asso. *v. C., M. & St. P. Ry. Co.* 500 (503-504).

VALUE OF COMMODITY.

Values of woolen piece goods said to be greater than values of cotton piece goods. Rates on Cotton Piece Goods, 41 (44).

Box shooks are made from low-grade lumber, and are less valuable than average grades. California Pine Box & Lumber Co. *v. A., T. & S. F. Ry. Co.* 257 (260).

Of mixed car of furniture is between \$2,500 and \$3,500; some cars contain furniture valued at \$15,000. Furniture Mfrs. Asso. of Grand Rapids *v. A. A. R. R. Co.* 262 (266).

Value, though important, is not the controlling element in classification. Loudon Machinery Co. *v. A., T. & S. F. Ry. Co.* 383 (384).

Average values at Chicago of different grades of stone and marble. Sawing or dressing enhances values. Rates on Stone and Marble from Chicago and Peoria, 390.

Difference in value does not justify a differential between slack and other varieties of bituminous coal. Alpha Portland Cement Co. *v. B. & O. R. R. Co.* 414 (422).

Value of distillate at wells is about 6 cents, and gasoline from 15 to 20 cents, per gallon. Pacific Creamery Co. *v. S. P. Co.* 586 (595).

Values per car of imported oils, domestic molasses other than blackstrap, and imported wire, compared. Peet Bros. Mfg. Co. *v. I. C. R. R. Co.* 634 (636).

Table showing values of different grades of gum lumber, etc. Rates on Lumber from Southern Points, 652 (691).

It is not fair in gauging the reasonableness or unreasonableness of a particular rate to consider the value of the commodity in its most unfavorable period. *Id.* (693).

Former conclusions as to value of gum lumber are entirely in accord with record herein. Northbound Rates on Hardwood, 708 (709).

VALUE OF SERVICE.

Is not conclusive as a criterion of the reasonableness of carriers' storage charges. Cleveland Salt Co. *v. P. Co.* 638 (639).

VOLUME OF TRAFFIC.

The proportion of freight hauled directly by rail lines to points in back-haul territory should be greater than the proportion hauled to terminals and should increase as distance from coast terminals increases. Commodity Rates to Pacific Coast Terminals, 13 (17).

Volume of grain shipments and necessity for prompt delivery at markets present difficult problem to carriers. Farmers' Cooperative Asso. *v. C., B. & Q. R. R. Co.* 60 (62).

VOLUME OF TRAFFIC—Continued.

Volume of past shipments and evidence of future volume is such as to justify demands for equipment. *Pennsylvania Paraffine Works v. P. R. R. Co.* 179 (194).

Movement westbound is greatly in excess of that eastbound. *Eastbound Transcontinental Cotton Rates*, 248 (250).

Four Nevada railroads have almost no traffic whatever on which to rely except traffic in and out of Tonopah and Goldfield. *Goldfield Cases*, 360 (373).

Through Wilmington does not appear to be sufficient to make that port an influential factor in making rates to Spartanburg and Charlotte. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (490).

Number of outbound and inbound trap cars received by large industries showing extent to which the service is used. *Trap or Ferry Car Service Charges*, 516 (522).

Hardwood movement from group where the hardwood rate approaches most closely to the yellow-pine rate without meeting it is very heavy. *Northbound Rates on Hardwood*, 708 (709-710).

WAGES.

Higher scale paid to mine thin-seam coal. *San Toy Coal Co. v. A., C. & Y. Ry. Co.* 93 (95).

Scale of wages paid to employees of roads serving Tonopah and Goldfield is higher than in other parts of the United States. *Goldfield Cases*, 360 (370, 373).

WAR IN EUROPE.

European situation said to have curtailed market for mine products. *California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co.* 257 (261).

Difficulties under which producers of gum lumber are now operating due largely to the depression which followed the outbreak of. *Rates on Lumber from Southern Points*, 652 (691, 693).

WAREHOUSEMAN. See also STORAGE.

A warehouseman, as such, has no special rights under the act; but when acting as consignee or consignor he has all the rights of a shipper. *St. Louis Terminal Case*, 453 (460).

WASTE MATERIALS.

Tariff of eleven carriers does not comply with section 6 in that it fails to name destination points, and is therefore stricken from the files. *Transportation and Disposal of Waste Materials*, 337.

WATER-AND-RAIL ROUTES.

Competition of, from eastern seaboard to El Paso via named Gulf ports affords only valid basis for fourth section relief in rates from Kansas City, St. Louis, and Chicago. *Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co.* 292 (298, 301).

WATER CARRIER. See BOAT LINES; THROUGH ROUTES AND JOINT RATES.**WATER COMPETITION. See COMPETITION (WATER).****WATER EQUIPMENT. See BOAT LINES.****WEAK LINES. See also FINANCIAL CONDITION; PROSPERITY.**

Neither tunnel company nor lighterage company has paid dividends, nor had gross earnings sufficient to pay operating expenses and fixed charges. *Rates in Chicago Switching District*, 234 (239).

Only one of four Nevada roads involved has been able to meet operating expenses and fixed charges or return dividends to stockholders. *Goldfield Cases*, 360 (367-369).

D. & N. M. Ry. operates through a sparsely settled country and its empty car mileage is approximately 99 per cent of its loaded car mileage. *Pulp & Paper Mfrs. Traffic Assn. v. C., M. & St. P. Ry. Co.* 500 (502).

WEAK LINES—Continued.

Weak railroads which originally operated under most trying conditions have been purchased by stronger lines and consolidated into great systems. Rates on Lumber from Southern Points, 652 (660).

That respondents are not in good financial condition can not be held to justify proposed rates. *Id.* (661).

WEIGHT. See also ESTIMATED; HOOF SELLING; MINIMUM; TOLERANCE; TRACK SCALES.

Requirement that variation between weights taken on track scales and hoof selling weights shall amount to 1,000 pounds per car as a condition to setting aside the one in favor of the other found unreasonable. *Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co.* 423.

Of cattle after fill is less than at point of origin. *Id.* (426).

The weight of grain transported must be determined with reasonable accuracy by carriers, and adequate weighing facilities provided. *Grain Elevation Allowances at Kansas City*, 442 (445).

If carriers choose to adopt elevator weights, where ascertained, in preference to track-scale weights, their right to cancel elevation allowances is not affected thereby. *Id.* (446).

Situation at Newport, Tenn., with respect to prompt issuance of freight bills showing scale weights of inbound and outbound shipments must be remedied. *Spiegle & Co. v. S. Ry. Co.* 448 (450).

Rule that initial point weights will govern on carload shipments of bananas, may be canceled. *Western Trunk Line Rules*, 554 (571).

WESTERN CLASSIFICATION.

Certain rules eliminated leaving western classification to apply. *Western Trunk Line Rules*, 554 (558-579).

WESTERN TRUNK LINE RULES.

Summary of the case. *Western Trunk Line Rules*, 554 (556).

Certain rules canceled leaving western classification to govern. *Id.* (558-579).

WESTERN TRUNK LINE TERRITORY.

Described. *Western Trunk Line Rules*, 554 (555).

WHARFAGE CHARGES.

Tariff contained no provision covering oil transferred from ship to tank through a pipe line, and reparation awarded for charges improperly assessed at Port Aransas, Tex. *Magnolia Petroleum Co. v. Channel & Dock Co.* 330

ZONE RATES. See also BLANKET RATES; GROUP RATES; PERCENTAGE RATES.

Points of manufacture on B. & M. and B. & A. railroads are grouped. Zones 1, 2, and 3, described. Rates on Cotton Piece Goods, 41 (42).

Slight increases recognizing the long standing relationship between inner and outer zones might be warranted, but not any change in the differential. *Sand and Gravel Rates from Wisconsin Points to Chicago*, 467 (468).

It appears that rates from Virginia cities to the southeast are constructed on a zone basis with respect to destinations. *Spartanburg Chamber of Commerce v. S. Ry. Co.* 484 (492).



DEC 30 1915

